

asian-mena Counsel

Volume 14 Issue 9, 2017

Third-party
funding in Asia

Is your legal
team ready for
Change 3.0?

Q&A: Katherine
Yap, Maxwell
Chambers

DISPUTE RESOLUTION



Plus:
The thing about ...
Ahmad Bin Hezeem

taylor root
SPECIALIST SEARCH & RECRUITMENT

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Counsel

SALARY SURVEY & MARKET UPDATE
for the legal and compliance
in-house sectors in Hong Kong,
Singapore and China.

Eric Chan



LOCAL ROOTS GLOBAL IMPACT

"The only local arbitration commission which meets or surpasses global standards" - The Economist Intelligence Unit

"The runner up for the up-and-coming regional arbitral institution of the year (2014)" - Global Arbitration Review



History and background

Established in 1995 as an independent and non-governmental institution, the Beijing Arbitration Commission, also known as the Beijing International Arbitration Center (the "BAC/BIAC"), has become the first self-funded arbitration institution in China and is widely accepted as one of the primary arbitration institutions internationally.

With the aim of delivering trusted professional services, the BAC/BIAC endeavors to promote and encourage the resolution of disputes through efficacious arbitration and a comprehensive understanding of Chinese arbitration practices. Towards this end, the BAC/BIAC actively organizes the Annual Summit on Commercial Dispute Resolution in China, sponsors the Biennial ICCA Conference, and contributes constructively to the UNCITRAL Working Group II's deliberations, as an observer.



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Hearing Room

Structure and Service

- * The BAC/BIAC is run by a Committee comprising of a Chairman and 14 members.
- * The BAC/BIAC's office, headed by the Secretary General, has 30+ case managers.
- * The BAC/BIAC has 500+ arbitrators, including 130+ international arbitrators in its Panel. Nominating arbitrators from outside the BAC/BIAC's Panel are permissible in international cases.
- * The BAC/BIAC has served clients from more than 30 countries, and has facilities to conduct arbitrations not only in Chinese and English but also in other languages.
- * There has been an exponential increase in the number of Arbitration cases filed with BAC/BIAC, from 7 in 1995 to over 30,000 in 2016.
- * Since 2012, the numbers of cases filed with the BAC/BIAC, on average per year, are 2,200+ in domestic cases, and 50+ in International cases.
- * Since 2012, the disputed value, on average per arbitrated case, was 1.5+ million USD, and in 2015, the highest disputed value went up to 1.7+ billion USD!

Recommended BAC/BIAC Model Clause:

All disputes arising from or in connection with this contract shall be submitted to Beijing Arbitration Commission / Beijing International Arbitration Center for arbitration in accordance with its rules of arbitration in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.

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Katherine Yap first joined Maxwell Chambers as the head of communications and customer relations, spearheading its establishment as an arbitration centre in 2009, the first of its kind in Asia. She was promoted to general manager in 2011 before assuming her current position as the chief executive in 2016. She is a certified associate mediator from Singapore Mediation Centre and an appointed mediator for Community Mediation Centre.

Peter Connor is currently based in Sydney, Australia and has experienced all sides of the legal industry, from senior private practice and regional in-house positions to a business role with a compliance firm. He formed AlternativelyLegal to help individual lawyers, legal departments, law firms and other legal and compliance service/product providers innovate and succeed in the rapidly changing legal industry.



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DISPUTE RESOLUTION

Special Report

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In March, the Beijing Arbitration Commission/Beijing International Arbitration Centre (BAC) and the Nairobi Centre for International Arbitration (NCIA) formally founded the China-Africa Joint Arbitration Centre – Beijing (CAJAC Beijing) and China-Africa Joint Arbitration Centre – Nairobi (CAJAC Nairobi).

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SPECIAL REPORT

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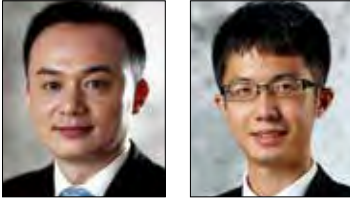
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CHINA



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Further analysis on Apple’s lawsuit against Qualcomm

In our last article titled “Apple Sued Qualcomm in China, Qualcomm Is Suspected of Abusing Market Dominant Position Again?”, we listed the cases in which Qualcomm was investigated, sued or punished in countries (and regions) for abusing its dominant market position and briefly introduced Qualcomm’s worldwide business model.

In this article, we will further analyse Apple’s claims in the case of Apple vs Qualcomm regarding abuse of dominant market position from the perspective of PRC laws, with reference to other relevant cases and the facts that we collected through public channels.

1. Qualcomm charges unfairly high royalties for licensing of standard essential patents (SEPs) and sets unreasonably strict conditions for Apple to obtain such licences

It is not difficult to determine that such claim is based on items (1) and (6) paragraph 1 of Article 17 of the Anti-monopoly Law. Pursuant to these two provisions, “selling commodities at unfairly high prices” and “applying dissimilar prices or other transaction terms to counterparties with equal standing” both belong to abusing of dominant market position. Qualcomm made a response to such claim a couple of days after Apple’s filing, stating that Apple was offered terms consistent with those accepted by more than 100 Chinese companies and those terms were in conformity with Qualcomm’s rectification plan approved by the National Development and Reform Commission of PRC (NDRC) in 2015 (according to the rectification plan,

Qualcomm commits to reduce the royalty base to 65 percent of the net selling price of mobile phones). In our opinions, if Qualcomm’s statement in its response is true, it might be very difficult for Apple to win the support from the court for such claim. After all, NDRC is the most authoritative enforcement agency of price monopoly in China and the court will not easily challenge the rectification plan approved by it.

2. Qualcomm refuses to license SEPs to some SEPs users

Korea Fair Trade Commission (KFTC) and US Federal Trade Commission (FTC) both determined that Qualcomm’s conduct of “refusing to license mobile communication SEPs to rival chipset makers” is illegal. We are inclined to believe that Apple would intend to take this opportunity to challenge Qualcomm’s business model and it is very likely that Apple will take reference of the penalty decision made by KFTC. From the perspective of PRC laws, Qualcomm’s conducts may fall into “refusing to trade with a trading party without any justifiable cause” and “violating the principles of fairness, reasonableness and no discrimination in refusing to licence, bundling or attaching any other unreasonable transaction conditions at the time of transaction so as to eliminate or restrict competition after their patent becomes a standard essential patent” that are respectively prohibited by item (3) paragraph 1 of Article 17 of Anti-Monopoly Law and item (2) paragraph 2 of Article 13 of the Provisions on Prohibition of Abuse of Intellectual Property Rights to Exclude and Restrict Competition.

3. Qualcomm restricts Apple to use exclusively the products/services it supplies or approves to use

During the investigation against Qualcomm, FTC mentioned that Qualcomm has paid accumulatively several billion US dollars to Apple in return for entering into exclusive chipset purchase agreements with Apple and for the purpose of hampering rival chipset makers. We guess that Apple’s claim has some connections with the aforesaid rebate and exclusive agreement. The conduct of hampering competitors through granting rebate has already been determined illegal by the State Administration for Industry & Commerce of PRC (AIC) in the Tetra Pak case. Therefore, if the aforesaid statement of the FTC is true, Qualcomm is also suspected of violating item (4) paragraph 1 of Article 17 of the Anti-Monopoly Law, ie “a business operator with a dominant market position shall not require a trading party to trade exclusively with itself or trade exclusively with a designated business operator(s) without any justifiable cause through abusing its dominant market position”.

Qualcomm has not yet given any response to the aforesaid claim 2 and claim 3 of Apple. It seems that Qualcomm is not confident enough, as some other countries have already determined its conducts illegal. Meanwhile, Apple chose to submit the dispute to the court directly rather than reporting to AIC in China, demonstrating that Apple’s intention is to compel Qualcomm to reach a settlement with it through claiming a high compensation and putting pressure on Qualcomm in the court of public opinion — that is, to subdue the enemy without fighting, a strategy from Sun Tzu’s Art of War. In our opinion, as long as Qualcomm’s illegal conduct does exist, no matter what approach Apple will take, it should not affect AIC’s initiation of anti-trust investigation against

Qualcomm for the purpose of protecting the public interest.

It should be noted that in the lawsuit brought by Apple against Qualcomm in the US in January 2017, in which Apple claimed US\$1 billion, Qualcomm has recently filed counterclaims against Apple, alleging that Apple breached agreements with Qualcomm;

interfered with Qualcomm's long-standing agreements with Qualcomm licencees; and encouraged regulatory attacks on Qualcomm's business in various jurisdictions around the world by misrepresenting facts and making false statements; etc. It can be seen that such counterclaims have made the situation more complicated and are Qualcomm's revenge

against Apple from another perspective rather than a statement of defence with regard to Apple's anti-trust claims. It is not clear whether Qualcomm's counterclaims will have any impact on Apple's lawsuit in China. In addition, it has not yet come out any update on this case since Apple's filing. All we can do is continue to wait and see.

再论苹果中国起诉高通

在上一篇题为《苹果中国起诉高通，高通再次涉嫌滥用市场支配地位？》的文章中，我们列举了近几年来高通公司因滥用市场支配地位行为被各国（地区）调查、起诉或处罚的情况，并总结了高通公司在全球范围内普遍采取的涉嫌滥用市场支配地位的商业模式。

我们将在本文从法律角度出发，结合从公开渠道获取的一些案外事实及其他相关案件的情况，具体分析苹果公司诉高通公司滥用市场支配地位一案的各项起诉理由。

1. 高通公司收取的标准必要专利许可费用及向苹果公司发出的许可条件过高从字面意思上看，不难判断出此项起诉理由的法律依据是中国《反垄断法》第十七条第一款第一项和第六项。根据这两项法律规定，“以不公平的高价销售商品或者以不公平的低价购买商品”和“没有正当理由，对条件相同的交易相对人在交易价格等交易条件上实行差别待遇”均属于被禁止的具有市场支配地位的经营者从事滥用市场支配地位的行为。针对苹果公司的此项主张，高通公司在其提起诉讼的几天后即做出回应称：其向苹果公司提供的许可条件，与超过100多家中国公司同意并接受的条款相一致，且符合2015年获得中国国家发改委同意的整改方案（根据此项整改方案，高通公司将相关专利许可费率的计费基准降低为手机净售价的65%）。我们认为，如果高通公司在其回应中所述的情况属实，苹果公司这一项基于许可费及许可条件的起诉理由可能很难

获得法院的支持，毕竟中国国家发改委是中国价格垄断最权威的执法部门，法院一般不会轻易挑战已经获得其同意的整改方案。

2. 拒绝向某些标准技术实施者提供许可鉴于韩国公平贸易委员会及美国联邦贸易委员会均认定高通公司“拒绝授权芯片制造业竞争对手使用标准必要专利”属于违法行为，不难看出，苹果公司希望以此为契机在中国向高通公司的此项行为发出挑战，同时有很大的可能性苹果公司将在案件中援引韩国公平贸易委员会做出的处罚决定。从中国法律的角度出发，高通公司的做法涉嫌违反《反垄断法》第十七条第一款第三项和中国工商总局《关于禁止滥用知识产权排除、限制竞争行为的规定》第十三条第二款第二项，即“没有正当理由，拒绝与交易相对人进行交易”和“在其专利成为标准必要专利后，违背公平、合理和无歧视原则，实施拒绝许可、搭售商品或者在交易时附加其他的不合理交易条件等排除、限制竞争的行为。”

3. 限定苹果公司使用其提供的或批准使用的产品/服务美国联邦贸易委员会在对高通公司的调查中曾经提及，高通公司曾累计支付苹果几十亿美元回扣，以换取与苹果公司签署排他性的芯片采购协议，排挤芯片业竞争对手。我们猜测苹果公司的此项起诉理由与上述回扣及排他性协议相关。经营者通过折扣滥用市场支配地位排挤竞争对手的行为已在利乐案中被中国工商总局明确为违法行为。因此，如

果美国联邦贸易委员会提到的上述情况属实，高通公司也涉嫌违反《反垄断法》第十七条第一款第四项的规定，即“没有正当理由，限定交易相对人只能与其进行交易或者只能与其指定的经营者进行交易”。

针对上述第2和第3项苹果公司的起诉理由，高通公司未作出任何回应，可以看出在相关违法事实已经被其他国家确认的情况下，高通公司似乎有些底气不足。同时，在本案中，苹果公司选择直接向法院提起诉讼的方式寻求救济，而非向中国工商总局举报，似乎是出于商业方面的考量，意图以高额索赔及舆论压力迫使高通公司与其达成和解，从而达到不战而屈人之兵的目的。但是，我们认为，如果高通公司的违法事实确实存在，不管苹果公司采取什么样的策略，都不应当影响到中国工商总局为保护公共利益对高通公司进行反垄断调查。

值得注意的是，针对苹果公司在2017年1月向美国法院提起的索赔十亿美元专利费的诉讼，高通公司于近期提出了反诉，其反诉理由包括苹果公司违反了双方之间的协议；干涉高通公司与其他厂商之间的联系；在全球范围内恶意鼓动监管机构对高通公司的业务发起攻击等。可以看出，高通公司的反诉并非针对反垄断指控而提出的抗辩，而是从另一个角度对苹果公司的回击，意图将案件复杂化。至于高通公司在境外提出的这一反诉是否会影响双方在中国的案件，不甚明朗。并且自苹果公司提起诉讼后，也未传出与案件有关新的进展，我们能够做的似乎只有继续等待。



INDIA



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Corporate compliance: Necessity and implication

The Companies Act of India is the primary legislation governing the functioning of companies established in India during their lifecycle. The secretarial compliances refers to a list of periodic and event-based compliances dictated by the Act to be adhered to by companies incorporated in India. Failure to adhere to these compliances can become a costly exercise for a company that can be avoided.

The Act casts an obligation on the directors, company secretary and other senior officers of a company to comply with the various provisions of the Act, such as convening of periodic board and shareholders meetings, manner and modes in which the meetings are to be convened, manner of maintaining statutory records of the company, making event based and periodic filings in prescribed e-forms with the Ministry of Corporate Affairs (MCA), appointment of various officers and directors on breach of specified thresholds under the Act, all times having a registered office.

Any contravention of the provisions of the Act attracts penalties, which have been categorically prescribed by the Act, on the company concerned and its officers in default. The penalties may be either civil or criminal in nature or both. For instance, failure to maintain a statutory register namely; register of member may attract penalty of Rs50,000 (US\$780), which may extend to Rs300,000 and with a further continuing penalty of Rs1,000 for the tenure during which the default continues or failure to properly prepare and sign the board's report entails a penalty of Rs50,000, which may extend to Rs2,500,000 on the com-

pany and the concerned officers of the company would be liable to a penalty varying from Rs50,000 to Rs500,000 or imprisonment of maximum three years or both. Similarly, the Act prescribes penalties for each of the non-compliances which may have severe ramifications on the company and its officers. The strictness with which the courts view the responsibility and the sacredness of the trust reposed in the directors and

“It has recently been observed that the authorities have become more vigilant towards secretarial compliances and are initiating prosecution of companies and the officers of companies who are in default”

its authorised persons has been emphasised in many cases.

Actions by the authorities

It has recently been observed that the authorities have become more vigilant towards secretarial compliances and are initiating prosecution of companies and the officers of companies who are in default on the basis of the information available with them. There have been instances where companies and their concerned officers have

been penalised heavily by the authorities on account of violation of the provisions of the Act. The authorities are not taking a lenient view even in case of non-compliances which are not of grave nature and have been penalising them strictly with the fine as prescribed under the Act. Recently, the MCA has issued notices to about a quarter million companies in India who are not carrying on any business or operations over the past two financial years and have failed to obtain dormant status from the Registrar of Companies. As per norms, the names of these companies would be struck off and the entities would be dissolved after providing them an opportunity of hearing. Since, the Indian government is focussed towards developing a regime of self-governance; the aforesaid steps are being taken to develop a compliance-based approach in the functioning of companies in India.

Conclusion

Considering, the increased focus of authorities on compliance under the Act and the extent of liabilities which a company or its directors/officers may incur on account of contravention of the provisions of the Act, it has become imperative on the part of the companies and their directors/officers to focus on corporate compliances in true letter and spirit. Adopting a post-mortem approach by companies in dealing with the corporate compliances may prove fatal for their financial as well as regulatory health.

The need and importance of corporate compliances can best be conveyed with the following quotation from Benjamin Franklin: “A little neglect may breed great mischief — for the want of a nail, the shoe was lost; for the want of a shoe, the horse was lost; for the want of a horse, the rider was lost; and for want of a rider, the battle was lost.”

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Senior Legal Counsel

Hong Kong 15+ PQE

Conglomerate seeks an experienced commercial lawyer to advise on a wide range of commercial legal matters. Strong in-house experience handling commercial work and a proven track record in people-management is necessary. Cantonese required. (IHC 14379)

Senior Legal Counsel

Hong Kong 10+ PQE

Leading financial services provider seeks a senior lawyer to advise on all aspects of the business, including issues relating to asset management and global markets. Candidates should possess solid experience gained in a financial institution. Fluency in Mandarin is required. An attractive package is offered. (IHC 15109)

M&A

Malaysia 6-10+ PQE

Leading property development company seeks a mid to senior level legal counsel to assist on their investments based in KL, Malaysia. The lawyer will be responsible for working with the business team on fund raising, M&A and joint venture projects across the region with a focus on Malaysia. (IHC 15227)

Construction Counsel

Malaysia 6-10+ PQE

Major property corporation seeks a mid to senior level property construction lawyer to join their legal team in KL, Malaysia. The lawyer will work with the legal and business teams in Malaysia to oversee and advise on all project infrastructure and construction related work. (IHC 15226)

China Commercial Counsel

Singapore 5-10+ PQE

Major US listed company in the IT space seeks a corporate/commercial lawyer to join their team based in Singapore. The counsel will be part of a dynamic team of lawyers supporting the business across the APAC region with focus on their business in China, where he/she will be involved in advising, negotiating and drafting a broad range of customer service related contracts. Mandarin is required. (IHC 15170)

Company Secretary

Hong Kong 5-10 PQE

Well-established financial institution has a vacancy for a legal counsel to oversee their company secretarial issues. Ideal candidate will have relevant experience gained from a reputable financial services firm or a sizable HK-listed company. Fluency in Mandarin and English are required. Collegiate team environment as well as competitive compensation. (IHC 15221)

FMCG

Hong Kong 5-10 PQE

UK listed company with significant growth plans for Asia Pac has headcount to appoint its first in-house counsel in Hong Kong to support the regional management team covering Asia Pac. Work will involve negotiating a range of commercial agreements and providing general in-house advice. Great opportunity to support a dynamic and young executive team. (IHC 15027)

International Legal Advisor

HK/China 4-8 PQE

Global technology company has a vacancy in their international legal team. The legal team advises on all aspects of the firm's international business, including issues related to e-commerce, b2b commerce, digital data storage, and global regulatory matters. Solid experience in corporate and commercial law gained from a leading international law firm is required. Fluency in English and Mandarin is important. (IHC 15135)

Employment Counsel

Singapore 4-8 PQE

Global financial institution seeks an employment lawyer to join their Corporate Services team based in Singapore. The lawyer will focus on advising the bank on employment related issues such as employment benefits, severance, and disputes across the APAC region, but will also be exposed to other general commercial work. (IHC 14965)

Legal Counsel

Guangzhou 5+ PQE

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Legal Counsel

Hong Kong 2-4 PQE

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Legal Counsel

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INDONESIA



By **Ibu Dini Retnoningsih and Indra Aditya Pambudy**



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New regulation on wage structure and scale for businesses

A new regulation enacted by Indonesia's Minister of Manpower requires employers to formulate, set and inform their employees of wage structure and scale.

Enacted on March 21, 2017, the relevant provisions of the Minister of Manpower Regulation No. 1 of 2017 on Wages Structure and Scale (the Minister Regulation No. 1/2017) are mandated under Government Regulation No. 78 of 2015 on Wage (Government Regulation No. 78/2015).

Based on Article 13, all employers must have formulated, implemented and notified the wage structure and scale by October 23, 2017 at the latest. Wage scale and structure set prior to the Minister Regulation No. 1/2017 coming into force will remain in force.

Scope of Minister Regulation No. 1/2017

Law No. 13 of 2003 on Manpower (the Manpower Law), Indonesia's primary legislation concerning employer-employee relationship, and Government Regulation No. 78/2015 differentiate the calculation of remuneration for employees remunerated based on time spent from those remunerated based on deliverables. The wage structure and scale provided under Minister Regulation No. 1/2017 applies to every employee in an employment relationship with the employer and applies as guidance in determining the remuneration of employees who are paid based on time spent (but not to those paid based on deliverables) (Art. 7(2) Minister Regulation No. 1/2017; see also Art. 14(1) GR Regulation No. 78/2015).

Minister Regulation No. 1/2017 applies to employers doing businesses within the territory of Indonesia. The Minister Regulation No. 1/2017 itself defines employ-

ers as individuals, partnerships or legal entities who/that: (i) operate own business; (ii) operate businesses owned by another party; (iii) represent self-owned business and business owned by another party domiciled outside the territory of Indonesia.

“All employers are required to formulate wage structure and scale, taking into account the employees’ work category, position, work period, education and competency”

Obligation to Formulate and Publish Wages Structure and Scale

Article 2 (1) of the Minister Regulation No. 1/2017 provides that all employers are required to formulate wage structure and scale, taking into account the employees’ work category, position, work period, education and competency.

A key change under the Minister Regulation No. 1/2017 is that the wage structure and scale must be informed to the employees, where this was not required under the previous regulation (Minister of Manpower Decree No. KEP-49/MEN/IV/2004) (see Article 8 of the Minister Regulation No. 1/2017). In addition, pursuant to Article 9, the Minister Regulation No. 1/2017 also requires that the wage structure and scale be submitted at the time the employer seeks to (i) ratify and renew its

company regulation; or (ii) register, extend and renew its collective work agreement. Company regulation and collective work agreement are two common instruments that set the employer-employee relationship. These instruments must be registered with the Ministry of Manpower and must be periodically renewed and extended from time to time.

Methods of formulating wage structure and scale

Article 4 (1) of Minister Regulation No. 1/2017 provides that the formulation of wage structure and scale may be carried out in three stages, namely 1) Analysis of position; 2) Evaluation of position; and 3) Determination of wage structure and scale.

The Minister Regulation No. 1/2017 allows employers the option to follow a template provided for in the Annex of the Minister Regulation No. 1/2017 (see Article 6 of Minister Regulation No. 1/2017). The template provides four methods to set wage structure and scale:

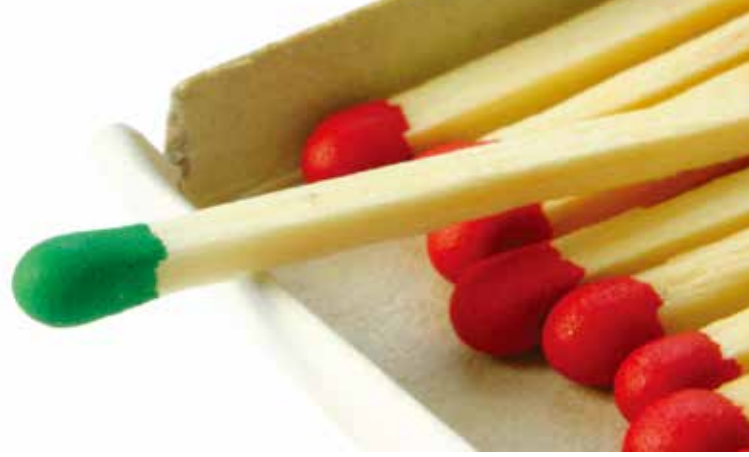
1. The simple ranking method;
2. The two point method;
3. The point factor method (for existing companies); and
4. The point factor method (for newly established companies).

Sanctions

According to Article 12 of the Minister Regulation No. 1/2017, a business that fails to comply with its obligations to formulate its wage structure and scale, and to inform its employees thereof, are to be penalised with administrative sanctions. The penalties for non-compliance will be determined based on the criteria set forth under Minister of Manpower Regulation No. 20 of 2016, and range from:

1. Written warnings;
2. Limitation on business activities.

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In-house

Group Investigation Counsel | 10+ yrs pqe | Tokyo REF: 13853/AC

This multinational corporation is seeking a qualified lawyer with proven investigation experience to head the global investigations function. Ideally based in Tokyo, this lead role will be responsible for overseeing all investigative activities and developing investigation capabilities globally with a focus on Asia and the emerging markets. The successful candidate will have at least 10 years' PQE in FCPA and compliance investigations gained in a multinational law firm or company and preferably experience in both Common Law and Civil Law jurisdictions. Candidates with the ability to manage complex investigations and litigation are best suited for the role. Native-level English is essential and proficient Japanese is an advantage.

Senior Legal Counsel | 8-10 yrs pqe | Beijing REF: 14022/AC

This Fortune 500 media and entertainment company is seeking a Senior Legal Counsel with business acumen to join its dynamic legal team based in Beijing covering China operations. You will report to the Head of Legal and be responsible for providing legal advice to management team within China on all legal matters with a focus on network distribution, production issues and business development activities. With 8-10 years' PQE and a PRC legal qualification, you will have solid experience in contractual, commercial and IP work at a leading law firm or a media/consumer/digital company. Compliance and regulatory experience is highly desirable. You must have excellent drafting skills, be pro-active and have initiative. Fluent English and Mandarin required.

VP, Equities | 6-10 yrs pqe | Hong Kong REF: 14015AC

This global investment bank is seeking a prime finance/equities lawyer to join a busy team based in Hong Kong to cover Asia Pacific. This role will mainly cover equities, prime brokerage and prime finance work. You must have the

relevant technical skills dealing with equity derivatives and have between 6-10 years' PQE gained at preferably both a top international law firm and a global investment bank. Chinese language skills are desirable but not essential. Candidates from overseas with relevant experience are welcome to apply.

Legal Compliance Officer | 5+ yrs pqe | Jakarta REF: 14017/AC

Exciting newly-created role as legal and compliance counsel for Indonesia for this top Fortune 500 US multinational technology company. Based in Jakarta you will be responsible for leading and managing all legal matters and compliance programs in Indonesia. The range of issues includes contract reviews, corporate governance, compliance and investigations, management of litigation and staff trainings. You must be Indonesian qualified with at least 5 years' PQE in a multinational corporation environment. In-house experience of ethics and compliance work is essential as is fluency in English and Bahasa Indonesia. Occasional travel outstation to conduct trainings.

Front Office Lawyer | 4+ yrs pqe | Hong Kong REF: 13996/AC

This world-renowned investment bank is seeking a highly motivated lawyer to join its debt trading group. This is a unique opportunity to transition to a front office role outside of legal and support deals on the trading floor. Directly reporting to the Hong Kong MD, you will draft and negotiate NDAs, LMA trade documentation and structure and manage special situations/private financing and portfolio transactions. Ideally, you have at least 4 years' experience in any of the following areas: debt capital markets, insolvency, credits and lending work at an international law firm and/or financial institution. Those who are eager to learn, fast thinking and resilient, and can work in an extremely fast-paced environment are sought. The ability to read Chinese is required.

Private Practice

Associates | 4-8 yrs pqe | Hong Kong REF: 139985/AC

One of the largest legal networks in the world is seeking multiple associates to join their expanding function in Hong Kong. You will be responsible for providing advice on a range of corporate and commercial matters as part of a varied and interesting workload. Ideally, you are Hong Kong qualified with 4-8 years' PQE in pre/post IPO and M&A work at international or leading local law firms. This role offers excellent career prospects and top compensation. Fluency in Chinese is preferred but not essential.

Associates | 4-6 yrs pqe | Hong Kong REF: 14016/AC

Dynamic corporate lawyers are required at this growing international law firm in Hong Kong. Ideally, you are Common Law qualified with 4-6 years' PQE in PE fund formation and/or M&A work at top law firms. Candidates must be highly motivated, have a commercial mind-set and be confident of working independently as well as having fluent English and Chinese skills.

Senior Trademark Agent | 3-5 yrs exp | China REF: 14020/AC

This growing intellectual property boutique firm is seeking a mid to senior trademark agent to join its Shanghai or Beijing office. You will mainly be responsible for handling trademark application, opposition and related litigation independently. You will work on copyrights, domain name and general IP work upon request. Ideally, you have a LLM with at least 3-5 years' trademark examination/trademark agent experience. You must have fluent English and Mandarin language skills for the role.

Associates, Compliance & Investigations | 2+ yrs pqe | Shanghai REF: 13989/AC

Top European law firm seeks a Compliance Lawyer to join its world-leading compliance and investigations team in Shanghai. You will mainly advise its European clients on compliance matters in China and provide assistance in investigations across Asia. Ideally, you are qualified lawyer with 2-4 years' relevant PQE at a top international or Chinese law firm in China. Knowledge of PRC law and up-to-date regulatory requirements and internal investigation experience are essential. Must have good drafting skills plus fluent written and oral English.



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PHILIPPINES



By Angelmhina D Lencio



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Fake news and its web of legal issues in the post-truth era

Oxford Dictionaries' Word of the Year for 2016 is "post-truth" — an adjective defined as "relating to or denoting circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief". The popularity of the word is attributed to the proliferation of fake news online.

In recent years, the international community has seen a rise in the use of fake news as a strategic tool. In an effort to minimise the claimed deleterious effects of fake news, policymakers are now exploring ways to regulate fake news online. German lawmakers have proposed a regulation where social media sites can face hefty fines if they do not remove fake news posted through their websites. Similar calls have begun in other EU countries.

In the Philippines, Senator Francis Pangilinan filed a resolution directing the appropriate Senate committee to conduct an inquiry on the proliferation of fake news on social media websites, particularly on Facebook, and to determine the possibility of amending the Cybercrime Prevention Act of 2012 to penalise these websites. Senator Pangilinan went on to state that Facebook may be considered as a "de facto media company or publisher" and should thus be accountable for the content it "distributes and allows to be distributed".

However, the regulation of fake news is far from simple. Is the mere act of providing a platform in which fake news articles are posted sufficient to hold them liable? Would a law imposing criminal liability on that basis not be unconstitutional?

In the ruling of the Supreme Court in *Disini v Secretary of Justice*, the Court held

that the mere act of sharing a libellous article cannot serve as the basis for criminal liability, and that authorship of the libellous article should still determine responsibility.

The arguments for or against culpability for fake news would depend on the characterisation of companies such as Facebook and Twitter. It may be argued that these companies are mere intermediaries, and should therefore not be held liable for the contents of articles posted by their users. Borrowing from the example of the Court in *Disini*, if a person posts on an office bulletin board a libellous statement, others who commented on the poster cannot be criminally liable as they are not the authors of the libellous statement. Should the person who provided the bulletin board then be held liable?

On the other hand, social media platforms may also be characterised as de facto media companies or publishers, as the resolution proposes. In such case, the legal theory would hinge on the claimed intervention of the platform in the publication of fake news.

If Congress legislates measures penalising these companies, the latter may need to draft more comprehensive censorship policies based on objective criteria. How these policies would be operationalised must also be thoroughly reviewed by legal advisers to minimise potential areas of exposure, ie grounds for lawsuits which users may bring as a result of any censorship effort. The first line of defense to these lawsuits is a review and revision of the social media platforms' terms of engagement with their users.

Further, there would inevitably be grey areas in the regulation of fake news. Even medical or scientific claims posted in some articles are clouded with controversy. Thus,

websites would then have the obligation not only to screen obviously fake news articles but also to determine the truth of debatable statements posted through their platforms.

Facebook has already collaborated with external fact-checkers to address the fake news problem. However, it is still uncertain whether such efforts can be used to interpose a "good faith" defence and repel liability. Social media sites would still face a big risk of being exposed to prosecution for failure to screen articles, despite best efforts, in the absence of codified points of action to be required from these companies.

Most importantly, the question that needs to be answered is should fake news be the subject of government regulation in the first place? Practically speaking, penalising social media platforms for allowing fake news articles may also serve as an indirect prohibition against fake news. Thus, from the point of view of the article writer, it is important to consider whether fake news enjoys the protection of the right to freedom of expression.

At present, dishonesty per se is not punishable. Even lies can be considered protected speech, provided they are not libellous. The right to freedom of expression does not have a correlative obligation to tell the truth.

Nonetheless, jurisprudence provides that speech may be curtailed should its utterance result in a clear and present danger which Congress has a right to prevent. Speech may also be curtailed if the interest of the government in repressing speech outweighs the interest of the writer. It is thus up to the government to show how the regulation of fake news can be justified.

(Note: This article was first published in Business World, a newspaper of general circulation in the Philippines)

The JLegal



Personality
Questionnaire
Experience

Every month, JLegal examines the PQE of a senior in-house counsel. This month we talk to Bernard Tan and discover he is irritated by anything too trendy, but don't call him Grumpy (or any of the other Seven Dwarfs)!

- What is on your mind at the moment?
How to get my team to proactively think about incrementally improving whatever we do everyday, in a structured manner that is monitored and tracked. Does this frighten you yet?
- What secret talent do you have?
I can identify almost every single WW2 fighter airplane (except the funny Russian ones).
- If you weren't a lawyer you would be a ...
Beach bum.
- What is your idea of misery?
Cooped up in prison with an inmate who plays Brother Louie (by Modern Talking) in an endless loop.
- What is the strangest thing you have seen?
A two-headed guppy that my female guppy gave birth live to (when I was a boy and mad about aquarium fish). It sadly did not last a day.
- What is your motto?
To live with reasonably few regrets (there will always be some so let's not be too hard on myself).
- If you could have one superpower it would be ...?
To see the future!
- What do you consider the most overrated virtue?
Passion. What on earth does that mean anyway? Sounds vaguely dangerous to me.
- What irritates you?
Pretentious hipster speak. Don't get me started on anything artisanal. Or mid-century modern. And no, I do not want anything deconstructed, natively foraged or, God forbid, molecular.
- What was your last Google search?
Manchester United.
- What's the one food you could never bring yourself to eat?
Smallish boiled fish left to cool. Which is odd because I am Teochew and I am supposed to be genetically inclined to love those things.
- Which of the Seven Dwarfs is most like you?
None. I do not identify with seven vertically-challenged men with personality disorders.

Bernard Tan

Managing Counsel, APAC
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Constitutional Court’s decision on Specific Crimes Act changes sentencing expectations

Sparked by an increase in the number of repeat offenders committing crimes, Korea has enacted a number of laws designed to prevent crimes by imposing aggravated punishment on repeat offenders.

However, the Korean Constitutional Court found a provision in one of those laws to be unconstitutional because these aggravated punishments were being excessively imposed without sufficiently considering special circumstances of the individual criminals involved. The Constitutional Court’s view is noteworthy in that it introduced the concept of flexible sentencing standards, replacing the rigid aggravated punishment standards that had been uniformly applied up to that time. The Constitutional Court’s decision is regarded as good news for those advocating the protection of human rights in Korea. Below are some of the details of the Court’s decision, which dealt with two different provisions imposing different ranges of punishment on repeat offenders who have committed larceny.

The Korean Act on Aggravated Punishments, Etc. for Specific Crimes (the Specific Crimes Act) included Article 5-4, which provided that a person who habitually committed crimes under Article 329 (larceny) of the Korean Criminal Act was subject to imprisonment of not less than three years, up to life in prison. Article 332 of the Criminal Act provided that habitual criminals under Article 329 were subject to punishment up to one and one half times the penalty specified under Article 329. Given that Article 329 requires imprisonment for

not more than six years or a fine not exceeding ₩10 million (US\$8,700) for non-habitual criminals who commit larceny, the aggravated punishment for habitual criminals who commit larceny under Article 332, totals imprisonment of not more than nine years or a fine not exceeding ₩15 million.

Article 332 of the Criminal Act and Article 5-4(1) of the Specific Crimes Act both related to the same type of crime — habitual larceny — but provided different severity levels of punishment for that crime. Because Article 5-4(1), which was enacted after Article 332, required heavier punishment than Article 332, the former prevailed over the latter when punishments were applied.

A defendant in a criminal case objected to these different punishments for the same crime. Charged under Article 5-4(1) of the Specific Crimes Act (instead of Article 332 of the Criminal Act), the defendant sought a decision that the law was unconstitutional (2014Heonga16). On February 26, 2015, the Constitutional Court decided that the provision was unconstitutional as claimed by the defendant. The Constitutional Court found that depending on how the prosecutor charged the defendant, the punishment for the same act of larceny could be different and such a discrepancy would be unfair to the defendant. For example, if the defendant was charged under Article 332 of the Criminal Act, then the defendant might be subject to a simple fine. In contrast, if charged under Article 5-4(1), the defendant would be sentenced to imprisonment of not less than one year and six months, even with

the penalty reduced as much as would be permitted under the judge’s discretion. The court stated that this huge difference in punishment resulted in a massive imbalance and inequality of punishment for the same crime, which violated the basic principles of the Constitution and conflicted with the principle of equality under the law.

Following the Constitutional Court’s decision, Article 5-4(1) of the Specific Crimes Act was revoked, and the Korean Supreme Court’s Sentencing Committee amended the sentencing standards applied to habitual criminals who engage in larceny. The amendment allows habitual offenders to be subject to greater sentencing discretion rather than to the uniformly severe punishment that had been provided under the Specific Crimes Act.

The court’s decision establishes a new trend for sentencing that abandons aggravated punishment based on special acts in favour of a more flexible sentencing standard which is customised to each case. This trend is expected to become even stronger in coming years. As this trend evolves it will be important to establish more scientific and concrete sentencing standards for dealing with criminal policies. Moreover, legal scholars and practitioners should engage in further study and discuss individual cases that were or may be subject to sentencing standards so that they can provide more feedback on existing sentencing standards. More feedback will likely result in more clarity in the standards. Clearer standards for sentencing, in turn, will contribute to enhanced protection of human rights in the Korean criminal court system. It will also help to realise the ideal of harmonising the protection of society with the return and adjustment to society of criminals.

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Boutique Law Firm
[A43330]

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US MNC
[A41066]

5-10 PQE
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- Strong commercial acumen, proactive approach, excellent interpersonal and communication skills highly valued

Legal Counsel
Asset Management
[A43331]

3+ PQE
Singapore

- To review and negotiate documentation such as investment management, investment advisory, funds distribution and derivatives agreements, as well as structuring documentation for new products
- Experience with asset management and/or financial services preferred
- Knowledge of ISDA and derivatives would be advantageous

Lawyer
Tax
[A41165]

2-3 PQE
Singapore

- Advising high net worth individuals on tax, family office & family business, wealth structuring, and wills, trusts & succession planning
- Singapore qualified
- Possess some relevant experience

Corporate Secretarial Executive
Investments and Advisory Firm
[A43329]

2-3 PQE
Singapore

- To manage day to day corporate secretarial tasks
- Prior listco experience a must-have
- ICOSA qualification a distinct advantage
- Good interpersonal, analytical and communication skills required

Contracts Specialist/Paralegal
Internet
[A41067]

2-5 PQE
Singapore

- To support customer/vendor contract negotiation, contract administration and corporate secretarial matters
- Articulate with basic drafting skills in English and Chinese
- Prepared to use technology including a contracts management system
- You should be a competent time manager and able to work as a team
- Paralegal training or recognised qualification, with some experience in a law firm ideal

Senior Corporate Counsel - Digital Video **15+ PQE**
IT **Mumbai, India**
[A43328]

- Ideally with some experience supporting digital media, content, e-commerce or retail businesses
- In-house experience strongly preferred
- Primary lawyer responsible for counseling the business on a broad range of commercial, licensing, technology, and regulatory matters
- To serve as lead counsel on strategic deals, helping launch new media services and offerings, providing day-to-day advice, resolving issues that arise in existing commercial relationships and handling pre-litigation legal disputes and inquiries
- Strong strategic organizational and project management skills, drafting, negotiation, analytical, management and leadership skills a must have
- Some domestic and international travel will be required

Corporate Counsel - Retail
E-commerce
[A41060]

8-10 PQE
Bangalore, India

- Responsibilities include setting up a legal framework to ensure regulatory and legal compliance for the launch of a food retail business in India and its expansion
- You will work on a wide range of commercial matters including conducting compliance trainings, and advising on licensing and regulatory requirements for product licences
- Prior in-house legal experience with an MNC (consumer products, manufacturing, FMCG, e-commerce or retail business) or a leading law firm is highly preferred
- Reporting will be to a Senior Corporate Counsel

Corporate Counsel - Public Policy
Technology MNC
[A43327]

7+ PQE
Delhi, India

- To support sales to the Indian public sector
- To handle a wide range of technology licensing contracts and subcontracts with public and private sector customers in India and the APAC region including teaming agreements, reseller agreements, and bid proposal/tender responses
- To support compliance with U.S. and international government contracting laws, rules and regulations, and train employees on company policies related to government contracting
- Previous work experience in a law firm and/or in-house experience at a technology or internet company
- Public sector focused transactional legal experience
- Familiarity with IT infrastructure, outsourcing, telecommunications or cloud computing services

Legal Counsel - Litigation
Chemical
[A41064]

7-10 PQE
Mumbai, India

- To manage a regional litigation docket that consists of commercial, credit and collections, real property, environmental and other litigation matters
- Act as investigations lead responsible for conducting, independently and jointly, small-scale to complex internal investigations related to alleged violations of the Company's business conduct guidelines and corporate compliance policies
- Provide legal advice to business primarily in South Asia and also in South East Asia covering agreements, transactions, claims and litigation, and local law compliance
- You should preferably have a combination of litigation, corporate and commercial experience within a law firm and/or in-house legal department

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An obvious advance in resolving “.vn” domain name disputes

In a previous article regarding the challenges of resolving “.vn” domain name disputes in Vietnam, we mentioned the recent increase in the number of .vn domain names and the increase in the number of .vn domain name disputes. Although there are four solutions to resolve such disputes, none of them seems good enough to meet plaintiffs’ demands.

Among these solutions, administrative remedies may be better than amicable settlements, arbitration remedies or civil actions because most domain name disputes relate to similarities with IP objects such as trademarks and inspectorates especially in the domain of science and technology. However, a fundamental challenge of administrative action is the lack of enforcement when the offending parties do not voluntarily return the disputed domain names and the Vietnam Internet Network Information Centre (VNNIC), the authority in charge of the management of .vn domain names, refuses to apply technical methods to coerce the offending parties to obey the rules.

To settle the above obstacle, the Ministry of Science and Technology and the Ministry of Information and Communication have cooperated to issue the joint Circular No. 14/2016/TTLT-BTTTT-BKHCN on June 8, 2016 providing guidance on procedure and process of change and withdrawal of domain names violating regulations on intellectual property (Joint Circular 14). Under this Joint Circular 14, there are three types of sanctions

“A fundamental challenge of administrative action is the lack of enforcement when the offending parties do not voluntarily return the disputed domain names and the Vietnam Internet Network Information Centre refuses to apply technical methods to coerce the offending parties to obey the rules”

applied for violation of the rules for .vn domain names:

- (i) Change of information of .vn domain names: where an electronic information page connected with a .vn domain name contains advertisements, information about the sale of goods and services which are identical or similar to a registered trademark and damage goodwill, reputation or physical assets of the trademark proprietor, the competent authorities can issue an administrative sanction to request the owner of right to use such domain name to change content of the connected electronic page ie removal of the advertisements, information in question.

- (ii) Return of disputed .vn domain names: where the .vn domain names are identical to or confusingly similar with, a registered trademark, trade name or geographical indicator and the owner of right to use such domain name has no lawful rights and interests to the said IP objects, the competent authorities can request such owner to return the disputed domain names within 30 days from effective date of related decision on administrative sanction.

- (iii) Withdrawal of disputed .vn domain names: where the owner of right to use such domain names fails to obey one of the two above requests, the authority which issues administrative sanctions shall be responsible to request VNNIC to apply technical measures to abolish the right to use the disputed domain names of the said owner.

By this guidance, either domain name or content of electronic pages connected with a domain name can be subject to enforcement activities with the key point being a procedure of withdrawal to coerce the offending parties to obey the rules.

The issuance of Joint Circular 14 can be considered an obvious advance of resolving .vn domain disputes because it provides a solid legal ground to deal with different types of violations, a straightforward procedure to actively handle cases regardless of offending parties’ non-cooperation and a mechanism of effective cooperation between state authorities to ignore delays in execution.

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Media/telco company is looking for a senior in-house legal counsel with experience in telco, M&A, finance or commercial matters. The role will work very closely with senior management & so a strong entrepreneurial spirit is required. Chinese language skills are not essential. AC6432

FUNDS HONG KONG 5-8 years

Well-known PRC asset manager is looking for a funds lawyer to join its in-house legal team. You should have experience in a range of investment products/financial services regulatory work (both retail & private). Business level Mandarin & ability to read & write in Chinese are essential. AC6204

LITIGATION HONG KONG 5-8 years

In-house opportunity for a mid-level litigator with experience in general commercial or financial services litigation. Interesting work & good work/life balance on offer. Strong analytical skills & ability to understand complex issues are required. Fluent English & Chinese essential. AC3989

PE FUND HONG KONG 4-7 Years

PE fund seeks a legal counsel to provide legal support on investment transactions. You will work directly with senior business management and will have a chance to gain exposure on the business end. M&A/PE experience from international firm and fluent Mandarin required. AC6452

MEDIA/COMMERCIAL HONG KONG 4-7 years

Global music production company seeks a commercial lawyer to advise on its music publishing activities in APAC. You will be a mid-level HK qualified lawyer with a strong commercial background. Prior IP/entertainment experience preferred. Fluent Cantonese & Mandarin needed. AC6442

CORPORATE/M&A HONG KONG 2-5 years

Well-known Chinese investment bank undergoing rapid expansion seeks junior to mid-level lawyers to join its legal team to support its growing business. Candidates with corporate finance, M&A or asset management background will be considered. Mandarin is essential. AC6429

PROFESSIONAL SUPPORT LAWYER HONG KONG 2-5 years

MNC seeks a PSL to prepare legal templates and governance reports & assist in compliance matters. We will consider candidates with corporate, commercial or litigation background from international firms. Excellent English & Commonwealth qualification required. AC6410

Private Practice

BANKING PARTNER/COUNSEL HONG KONG 10+ years

US law firm is seeking a banking partner who is an experienced finance lawyer at a reputable international law firm. You will either be a junior partner or a counsel with experience working with PRC clients. Fluent Mandarin language skills required. AC6403

M&A PARTNER/COUNSEL HONG KONG 8-15 years

Top tier international firm seeks a Counsel or junior Partner to join its M&A practice. You will have extensive APAC M&A experience, fluency in English & top tier firm training. Excellent opportunity for a Counsel to step into a partnership role. No book of business needed. AC6390

ASSET FINANCE HONG KONG 5+ years

UK firm seeks a senior ship finance associate with 5+ PQE to join its team. You should have asset finance experience, ideally ship finance expertise. You should be Hong Kong admitted with experience gained from a well-regarded law firm. Chinese language skills are essential. AC6423

INSOLVENCY LITIGATION HONG KONG 5-7 years

Reputable global law firm seeks litigator with strong insolvency litigation experience from an international or HK law firm. Prior experience with business development and client-facing responsibilities will be viewed favourably. Chinese language skills preferred but not essential. AC6438

M&A/PE HONG KONG 4-6 years

Magic Circle firm's market leading M&A/PE practice seeks mid-to-senior associate to carry out public and private M&A, PE transactions and takeovers. M&A/PE experience from a top tier international firm in Hong Kong required. Chinese language skills ideal but not required. AC3874

BANKING HONG KONG 3-5+ years

Top tier UK firm's finance team seeks 2 lawyers to expand team: a mid-level banking associate with strong lending experience for a mixed banking and DCM role, and a 5+ PQE banking/finance lawyer to focus on complex lending matters & acquisition finance. Mandarin essential. AC6234

REGULATORY HONG KONG 3+ years

UK law firm seeks a regulatory associate to advise on matters including setting up of regulated businesses in HK, corporate governance, AML and data privacy. Experience in regulatory advisory work and excellent drafting skills needed. Fluent Chinese language skills preferred. AC6348

EVENT REPORT



First Shenzhen In-House Community Congress

In early April, the In-House Community was proud to present the inaugural Shenzhen In-House Congress at the Shenzhen Marriott Hotel Nanshan.

Following introductory remarks by Patrick Dransfield, director at In-House Community, the plenary panel, moderated by Ariel Ye, partner, King & Wood Mallesons discussed “In-House Lawyering: Uncovering the Relationship Between Quality, Cost and Value, and their Continuously Changing Relationship with External Counsel”. Valuable contributions came from Guo Jianjun, vice president and chief legal officer, Noah Holdings; James Yao, chief legal officer & Company Secretary,

Ping An Insurance (Group) Company of China; Winnie Ma, senior director & senior associate general counsel, Walmart China; and Han Jun, vice president, Shenzhen Lawyers Association and Partner, V&T Law Firm, The engaging discussion was followed by a welcome speech by Liu Xiaochun, president, Shenzhen Court of International Arbitration.

Providing plenty of opportunity for the Shenzhen community to network and share, the day also featured focused practice workshops including an Arbitration Clause Negotiation Workshop – Honing the Art of Negotiation, presented by Skadden, Arps, Slate, Meagher & Flom

and Hong Kong International Arbitration Centre, Equity Investment Related Dispute Resolutions from AnJie Law Firm, and US, China and UK Corporate Risk Enforcement Trends: Anti-Bribery, Economic Sanctions and Financial Enforcement, hosted by Latham & Watkins .

Thanks go to all our co-hosts and speakers for making this first Shenzhen In-House Community gathering a success.



A special thanks on behalf of the In-House Community™ to all our speakers, which included:



Catherine Guo
Partner
AnJie Law Firm



George Zhang
Partner
AnJie Law Firm



Liu Jing
Deputy Secretary-General
Hong Kong International
Arbitration Centre



Ariel Ye
Partner
King & Wood
Mallesons



Hui Xu
Partner
Latham & Watkins



Guo Jianjun
Vice President and
Chief Legal Officer
Noah Holdings
Limited



James Yao
Chief Legal Officer &
Company Secretary
Ping An Insurance
(Group) Company of
China



Dr Liu Xiaochun
President
Shenzhen Court of
International Arbitration



Chiann Bao
Asia Pacific Counsel
Skadden, Arps,
Slate, Meagher &
Flom



Wilfred Ho
Associate
Skadden, Arps, Slate,
Meagher & Flom



Han Jun
Vice President,
Shenzhen Lawyers
Association and
Partner
V&T Law Firm



Patrick Dransfield
Publishing Director
ASIAN-MENA COUNSEL and
Co-Director, In-House Community

“The first Shenzhen Congress had good content, very interactive. It was great to share with my peers”

– Shenzhen Congress delegate

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Michael Allen | In House FS Hires

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Mike Wright | Private Practice Hires

+ 852 2520 5298 | mikewright@puresearch.com

Sherry Xu | In House C&I Hires

+ 852 2520 5072 | sherryxu@pureseach.com



puresearch.com

Pure Search International Pte Ltd, Level 61, Unit 09 The Center, 99 Queen's Rd Central, Hong Kong



EVENT REPORT

Fourth annual HCMC In-House Community gathering



On April 20th, the Lotte Legend Hotel Saigon played host to the 4th annual HCMC In-House Community Congress. In what is a growing, and rapidly maturing, in-house community, delegate questions and discussions made for a lively and interactive forum.

The opening plenary session addressed: “The Path to Excellence – How to benchmark the In-House Team’s evolution and What is the role of External Providers to assist the In-House Team

along this path?” Informed by the data provided by our In-House Community pre-event survey, our excellent plenary panel comprising Nang Nguyen, head of legal, ANZ Bank (Vietnam); Thuy-Minh Lai, chief admin officer, Country Legal Counsel, Citibank, N.A. (Vietnam); Tom Vaizey, senior legal counsel, Dragon Capital Group; Maurice Burke, partner, Hogan Lovells; Nguyen Anh Tuan, partner, LNT & Partners; Zunu (Joon-Woo) Lee, partner, Yoon & Yang; and moderated by

Patrick Dransfield, publishing director, In-House Community elucidated on the subject and raised thoughts of how best to utilise the resources available to in-house teams.

The sessions that followed provided a breadth of topics for delegates to choose from, including: Risk Management for In-House Counsel Handling Cross-Border Contracts, presented by Duane Morris Vietnam; How to Utilise International Trade Agreements, courtesy of Yoon & Yang; Tone from the Top: Why Ignoring the FCPA and Other International ABC Laws is NOT an Option, hosted by Hogan Lovells; and Management Beware: The Hostile Takeover is Coming to Vietnam. How to Protect Yourself, followed by What an Employer Needs to Know about an Employee’s Right to Privacy, both presented by Russin & Vecchi.

Thanks to all our speakers and co-hosts, as well as our sponsors Hughes-Castell and Robert Walters, for their support of the Vietnam In-House Community.



A special thanks on behalf of the *In-House Community*™ to all our speakers, which included:

“...good networking, informative workshops, professional speakers and panels”

– HCMC Congress delegate



Nguyen Ngoc Nhu Uyen
Investment Director
Asia Commercial Bank



Nang Nguyen
Head of Legal
ANZ Bank (Vietnam) Limited



Giles T. Cooper
Partner
Duane Morris Vietnam LLC



Huong Mai Thi Duong
Associate
Duane Morris Vietnam LLC



Tran Phuong Nga
Human Resources Business Partner
Director
BigC Supercenter



Thuy-Minh Lai
Chief Admin Officer
Country Legal Counsel
Citibank, N.A. (Vietnam)



Tom Vaizey
Senior Legal Counsel
Dragon Capital Group



Nguyen Anh Tuan
Partner
LNT & Partners



Michael Beckman
Senior Associate
Russin & Vecchi



Manfred Otto
Senior Associate
Duane Morris Vietnam LLC



Bach Duong Pham
Special Counsel
Duane Morris Vietnam LLC



Maurice Burke
Partner
Hogan Lovells



Zunu (Joon-Woo) Lee
Partner
Yoon & Yang LLC



Patrick Dransfield
Publishing Director
ASIAN-MENA COUNSEL and
Co-Director, In-House Community



Mai Minh Hang
Partner
Russin & Vecchi



Nguyen Huu Minh Nhut
Partner
Russin & Vecchi



Sungbum Lee
Partner
Yoon & Yang LLC

SCIA

深圳国际仲裁院

SHENZHEN COURT OF INTERNATIONAL ARBITRATION

华南国际经济贸易仲裁委员会

SOUTH CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION



Established in 1983, the Shenzhen Court of International Arbitration (the South China International Economic and Trade Arbitration Commission, the “SCIA”) is one of the most internationalized and independent arbitration institutions to resolve commercial disputes. It is also the first arbitration institution in Mainland China to hear investor-state arbitrations and to administer cases under the UNCITRAL Arbitration Rules. *Model Arbitration Clause: Any dispute arising from or in connection with this contract shall be submitted to Shenzhen Court of International Arbitration (SCIA) for arbitration.*

Address:

Headquarter: 41/F, the West Square of the Shenzhen Stock Exchange Building, 2012 Shennan Blvd., Futian District, Shenzhen, P.R.China

Futian Office: 19/F, Blk B, Zhongyin Building, 5015 Caitian Road, Futian District, Shenzhen, P.R.China

Qianhai Shekou FTZ Office: A110, Blk A, Qianhai Complex, Yueliangwan Avenue, Nanshan District, Shenzhen, P.R.China

Luohu Office: 2/F, 5045 Shennan East Road, Luohu District, Shenzhen, P.R.China

Website: www.scia.com.cn

Telephone: 86-755-83501700

E-mail: info@scia.com.cn

MOVES

The latest senior legal appointments around Asia and the Middle East

 AUSTRALIA

Corrs Chambers Westgarth has added **Joshua Paffey**, one of Australia's leading infrastructure and projects lawyers, as a partner based in Brisbane. He joins with an outstanding team, which will be based in Brisbane but will continue to work on projects throughout Australia and Asia. Paffey has particular experience advising Korean companies on projects in Australia and throughout Asia Pacific. Working with clients in the energy and resources and oil and gas sectors, he advises on major infrastructure disputes in all formats, including litigation, arbitration, adjudication, appraisal and expert determination.



King & Wood Mallesons has appointed **Sue Kench** as global managing partner, effective June 1, 2017, succeeding **Stuart Fuller** who stepped down from the role at the end of 2016 and has returned to full time practice in Australia. Kench previously held the role of chief executive partner for Australia and will be replaced by **Berkeley Cox** in that role. She is a current member

of the firm's global executive committee and international management committee. The firm has also announced the appointment of **Rupert Li** to a new role of global chief operating officer.

 CHINA

DLA Piper has added **William Fisher** as a partner and head of patent in China, to be based in Shanghai. Fisher's practice focuses on counselling, licensing and enforcement/litigation in all areas of intellectual property, with particular emphasis on patents, trade secrets and international IP and technology-related transactions. Fisher has 20 years of experience advising clients in a wide range of technologies and industries. He has practiced in the US, China and Hong Kong, and is the former chair of the IP practice in China Committee and IP practice in the Far East Committee of the American Intellectual Property Law Association. Fisher was a partner at Hogan Lovells in Shanghai prior to joining DLA Piper.

Han Kun Law Offices has added **Huaying Qi** as a partner, working primarily in the firm's Beijing office. Prior to joining the firm, Qi worked at Simpson Thacher & Bartlett (New York and Hong Kong) and Cooley (San Francisco and Shanghai). With more than 10 years of experience in fund formation and investment management-related practice areas, she has been concentrating on the formation and operation of domestic and international investment funds. She also has substantial experiences in representing institutional investors in structuring and negotiating their investments in investment funds. Qi has been deeply involved in and is familiar with internal economic and governance arrangements at the GP/

management company level and other arrangements related to sponsored funds.

Stephenson Harwood has strengthened its ship finance and commercial litigation practices in Shanghai with the addition of partner **Vincent Xu**. With more than 15 years of experience both in-house and in private practice, Xu has extensive knowledge of the shipping industry, with a strong focus on non-contentious ship finance and energy matters, including asset and project finance, leasing, restructuring, shipbuilding and offshore construction. He joins from Ince & Co.

 HONG KONG

Gibson, Dunn & Crutcher has added four partners from Ropes & Gray to its Hong Kong office: **Paul Boltz**, **Scott Jalowayski**, **Michael Nicklin** and **Brian Schwarzwald**. Boltz was managing partner of Ropes & Gray's Hong Kong office, focusing on capital markets and M&A transactions. Jalowayski advises private equity funds and other global and regional investment managers on their investment and M&A transactions. Nicklin's practice covers a broad range of debt-financing transactions across Asia Pacific, with particular experience in leveraged finance. Schwarzwald represents global and Asian private equity funds and other asset managers in transactions across Asia and Australia/New Zealand.



 INDIA

HSA Advocates has re-hired **Mazag Andrabi** as a partner to further strengthen its disputes, regulatory and policy practice. Andrabi left the firm in 2015 to practise as an independent counsel and as the assistant attorney general of the Indian state of Jammu and Kashmir. While she has a broad-based disputes practice and regularly appears before diverse courts and tribunals, her primary focus continues to be the regulatory space, with emphasis on the power sector and environment.



Luthra & Luthra has added **Pallavi Bedi** as a corporate partner. Prior to this move, Bedi was a partner at JSA. She has also previously worked at the London office of Mayer Brown International, with a specific focus on project finance. She has been widely practicing in the areas of projects and infrastructure, with focus on energy, mining and infrastructure projects. She has extensive experience in advising domestic and international pro-

ject developers. In addition, she advises clients on concession agreements, gas sale and purchase agreements, power purchase agreements, off take agreements, engineering, procurement and commissioning contracts, and operations and maintenance contracts. Bedi is a member of the Bar Council of Delhi and the Association of International Petroleum Negotiators.

Shardul Amarchand Mangaldas has added **Amit Khansaheb** as a partner. He joins with a team of five other partners, who were until recently with BMR Legal. Khansaheb brings with him over 18 years of experience. Prior to joining the firm, he has had a long career at Desai Diwanji and spent more than four years at BMR Legal. He specialises in M&A and private equity.

 **JAPAN**

K&L Gates has added **Eric Sedlak** as a corporate partner in the Tokyo office. Joining from Jones Day, Sedlak focuses on energy, infrastructure and resources, project finance and corporate M&A. He has been based in Asia for more than 20 years, having practised in Singapore and Vietnam prior to Japan. He has substantial experience advising on South-East Asian energy and infrastructure projects, and also advises clients on M&A and securitisation deals.

Sedlak serves as vice president of the American Chamber of Commerce (AmCham) in Japan. He also co-chairs the Gaiben Kyokai foreign lawyers association in Japan.

 **SINGAPORE**

Akin Gump has added **Michael Joyce** as a partner in its global energy and transactions practice in Singapore. He joins from Norton Rose Fulbright, where he was head of the oil and gas group for Australia. He has relocated from Sydney, Australia back to Singapore where he was based earlier in his career. Joyce has more than two decades of experience advising on matters involving natural gas and oil value chains. He has also assisted clients with power projects, mining and greenfield infrastructure development. Based in Sydney for many years, Joyce has extensive international experience, having advised on transactions involving more than 20 jurisdictions globally, including on outbound investment from Japan.



Michael Joyce

AMC



Maxwell Chambers is expanding its premises to occupy the adjacent conservation building at 28 Maxwell Road. We are now taking bookings for the new office spaces at 28 Maxwell Road.

For tenancy matters, please email tenancy@maxwell-chambers.com or call +65 6595 9014.



asian-mena Counsel Deal of the Month

Guotai Junan's Hong Kong IPO

Guotai Junan Securities' US\$2.1 billion initial public offering in Hong Kong was the second-biggest IPO in the world so far this year, behind the much-hyped market debut of Snap in the US.

With this deal, Guotai Junan was able to buck a trend in Hong Kong and execute an offering that appealed to institutional investors in a market that often falls short of that standard. It has become routine in Hong Kong for Chinese issuers to place large blocks of shares with mainland investors who are not particularly sensitive to the price of a deal because their motivation for taking part is to move money offshore.

This practice can distort the normal process of price discovery and result in

unattractive valuations that discourage participation from international investors, and has ultimately led to the disappointing secondary-market track record of Hong Kong IPOs.

However, Guotai Junan adopted a unique approach by pitching its IPO at a fixed price that was more attractive to international investors and which resulted in an order book that was significantly less dominated by typical cornerstone investors. It is unclear whether this was a deliberate strategy or a result of growing price sensitivity in China amid a stricter stance by mainland foreign-exchange officials. Either way, the deal may herald a period of better-priced IPOs in Hong Kong.

Clifford Chance advised the underwriters — Guotai Junan International, Bank of America Merrill Lynch, Goldman Sachs and Shanghai Pudong Development Bank international — and a group of 20 syndicate members on Hong Kong law. China co-managing partner Tim Wang, supported by partners **Jean Thio** and **Virginia Lee**, led the transaction. **Grandall Law Firm** advised the underwriters on Chinese law. **Freshfields Bruckhaus Deringer** advised Guotai Junan on Hong Kong. The team was led by corporate partners **Teresa Ko**, **Calvin Lai** and partner-elect **Jason Xu**. **Haiwen & Partners** advised the issuer on Chinese law.

Other deals during the past month:

Baker McKenzie has acted for New York-listed **Post Holdings**, a consumer packaged goods holding company, on its agreement to acquire Weetabix from Shanghai-based state-owned enterprise Bright Food Group and an investment fund advised by Barings Private Equity Asia. London corporate partner **Charles Whitefoord**, supported by partners **Bill Batchelor** (Brussels) and **Regine Corrado** (Chicago), led the transaction, which was announced on April 18, 2017. **Lewis Rice** advised Post Holdings on the US aspects. **Ropes & Gray**, led by private equity partners Will Rosen (London) and **Peng Yu**, supported by anti-trust partner **Ruchit Patel**, and **Linklaters**, led by London private equity partner Carlton Evans, acted for **Baring Pri-**

vate Equity Asia and **Bright Foods**. **Mills & Reeve**, led by corporate partner **Anthony McGurk**, acted for **Weetabix**.

Paul, Weiss has represented **Tencent**, a leading provider of internet value-added services in China, on its US\$200 million cash investment in Zhuan Zhuan, a China-based used goods trading platform operated by 58.com, China's largest online marketplace serving local merchants and consumers. Under the agreement, 58.com will inject the Zhuan Zhuan app and other listing channels into a separate group of entities controlled by Zhuan Zhuan entities, while Tencent will invest US\$200 million in cash and additional business resources into the Zhuan Zhuan entities for a minority equity stake. Corporate partners **Jeanette Chan**,

Judie Ng Shortell and **Tong Yu** led the transaction.

Simpson Thacher has represented the underwriters, led by joint global coordinators Nomura Securities, Morgan Stanley and UBS, on Sushiro Global Holdings' ¥68.8 billion (US\$634.8m) IPO in Tokyo, including a Rule 144A and Regulation S international offering to institutional investors. Sushiro Global Holdings operates Sushiro, the leading brand of value *kaiten* (conveyor belt) sushi restaurants in Japan. Partner **Alan Cannon** led the transaction.

For a full list of recent deals and their advisers, go to www.inhousecommunity.com/deals/



Be it a case of wanting to spice things up or break the pattern, every now and then, it's nice to know there's something else. Whether you do so casually or stringently, take a look below to see what the legal sector can offer you.

Corporate Counsel, M&A
3-6 yrs PQE, Singapore

A reputable insurance brokerage firm would like to hire a counsel with business acumen for Singapore. You will be required to have M&A experience because you will be responsible for leading their M&A insurance team. The scope of work will include negotiating contracts with insurers and building a book of business in the Singapore market. The ideal candidate must be willing to spend at least six months abroad because training will be provided at their headquarters. Only Singapore-qualified lawyers will be considered. [Ref: JGB – IS 1711]

Contact: Benedict Joseph
Tel: (65) 6818 9707
Email: benedict@jlegal.com

APAC Head of Legal, Fintech
15 yrs PQE, Singapore

This is an Asia-Pacific lead role for one of the top players in the fintech industry, where you will be responsible for supervising lawyers in the region to support the legal agenda of the group. You will manage a team in handling all general corporate matters, from commercial contract reviews, data privacy, compliance and M&A to litigation support when needed. You will also help assess and proactively flag out any legal risks that may impact the business (development) regionally. Ideally you have spent at least the past four years in a supervisory or management role in a regional capacity. [Ref: JO – 1701]

Contact: Michelle Koh
Tel: (65) 6407 1202
Email: michellekoh@puresearch.com

Derivatives Legal Counsel
6-10 yrs PQE, Hong Kong

A bulge bracket bank with a strong business in the derivatives and structured products area is looking for a senior lawyer with relevant experience to join its legal team. Candidates should have equity derivatives transactional and regulatory experience from either a top tier law firm or another financial institution. For the right candidate, there will also be management responsibilities. Chinese skills are not required and strong overseas candidates will be considered. [Ref: PBP6299]

Contact: Chris Chu
Tel: 2537 7415
Email: cchu@lewissanders.com

Legal Counsel
2-4 yrs PQE, Hong Kong

A Nasdaq-listed company seeks an experienced commercial lawyer to work in-house within its supply chain operations (commercial, supply, sourcing, procurement, employment). Hong Kong- and/or PRC-qualified lawyers a preference. [Ref: HC 15178]

Contact: William Chan
Tel: (852) 2920 9105
Email: w.chan@alsrecruit.com

Asia Compliance Officer, US MNC
10+ yrs PQE, Singapore

A US multinational corporation is looking to hire a senior compliance professional for Asia. You should be legally qualified in a common law jurisdiction, with compliance experience in FCPA, anti-bribery, anti-boycott, AML laws, etc. You should also have prior legal and/or compliance experience within an MNC, and be able to speak Mandarin as this role will involve working closely with Chinese counterparts. Some travel required. [Ref: A41065]

Contact: Surene Virabhak / Laura Liu
Tel: (65) 6214 3310
Email: resume@legallabs.com

AVP, Corporate Banking Compliance
6+ yrs PQE, Singapore

A European multinational bank is seeking an experienced compliance professional to join its Singapore office to cover its corporate banking business. You will be responsible for providing compliance support, managing compliance reports, implementing compliance policies and handling audits and inspections. You must have at least six years' compliance experience on capital markets activities with financial institutions or regulators. Solid knowledge of the Securities and Futures Act and the Banking Act is required. Candidates with strong organizational awareness and sensitivity are highly desirable. [Ref: 14023/AC]

Contact: Vivien Lai
Tel: (65) 6220 2722
Email: hughes@hughes-castell.com.sg



Richard Dailly
Managing Director

Use of intelligence in identifying assets

Kroll is frequently asked by law firms whether we are able to help with asset searches ahead of contemplated litigation or during a dispute. If a plaintiff's claim is to have any real meaning in a litigation situation at the end of the day, law firms representing a plaintiff need documentary evidence of the assets of the defendant. This is not, however, always as straightforward as it seems because, in a very large number of instances, proof of ownership is considered confidential. Additionally, while a law firm might know where to get relevant information on some assets, Kroll can make a real difference in asset search situations in ways that may not be available to law firms or other consulting firms.

For example, all too often we are asked whether we can identify assets in jurisdictions such as Indonesia and the Philippines. I mention these two jurisdictions specifically because (a) many non-local companies seem to get themselves into difficulties in these countries, and (b) it is especially difficult to determine ownership given the culture of opaque corporate structures. However, a critical question that should be asked at the very outset is: "Do we actually have any chance of winning (or enforcing) a case in

"In a recent case, we found a subject's teenage son boasting on Twitter about being on "the yacht", giving away his location"

Indonesia or the Philippines," to which the answer is likely to be "no". In this instance, we would suggest that the client look for assets outside of these countries, in a jurisdiction with a more transparent regulatory environment. Here Kroll can help.

Imagine needing to investigate the assets of an entity whom a client is considering taking action against. It turns out that these assets are not only well hidden, but also hidden in a more opaque jurisdiction. By deploying human assets, however, Kroll can gather vital intelligence which can potentially change the course of the search and the outcomes. I recall one case related to a contractor in the resource sector who had caused millions of dollars of damage in an Asian country and then fled. While a regular document check found nothing, Kroll was able to generate credible intelligence on the individual. Our discreet enquiries resulted in suggestions that the subject had business in Latin America. Being a global firm, Kroll was then able to verify and search company databases in that Latin American country and prove that the individual did indeed have corporate assets in that country, a jurisdiction where the client was able to take action.

I managed a similar case in Asia where a law firm client and Kroll had exhausted all options of retrieving records. Through the use of human assets, in this case, a surveillance team, we were able to determine that the subjects made frequent visits to Western Australia and an African country. On-the-ground intelligence-

gathering led to the retrieval of critical documents which, again, enabled the client to take action.

The common denominator in these cases is that by using discreet human intelligence, Kroll was able to change the theatre of operations and provide a new environment for the client to take action.

While this tactic is tried and tested, the entire industry is going through a radical shift at the moment with the development of third-party applications able to search and make links on social media. These apps make it possible to see connections on social media and other platforms, even when people think they are being careful. In a recent case, we found a subject's teenage son boasting on Twitter about being on "the yacht", giving away his location. Using Google Earth, we were able to triangulate his location, while another more detailed map was able to tell us which restaurants overlooked the yacht. By searching pictures of people on Trip Advisor and Instagram, we were able to identify the yacht when a kindly person posed in front of it. Another third-party application told us where the yacht had been, and against this data we were able to obtain documentation from those locations.

The bottom line is that Kroll sees these kinds of problems all the time, and we may very well have innovative approaches that may help you and your clients when confronted by an unusual situation.

rdailly@kroll.com
www.kroll.com

DISPUTE RESOLUTION

Special Report



26 Asia gears up for international arbitration

Developments across the region are supporting the development of alternate dispute resolution mechanisms that will promote further investment into Asia's fast-growing economy, writes **Nick Ferguson**.

27 Q&A: Katherine Yap, chief executive of Maxwell Chambers

We speak to the head of the Singaporean dispute resolution complex about expansion plans and the city's role as an ADR hub.

30 Third-party funding in Asia

Asian-mena Counsel speaks to **Tom Glasgow**, investment manager for Asia at **IMF Bentham**, about the environment for third-party funding in the region.

33 The role of arbitration in promoting Sino-African trade and investment

In March, the Beijing Arbitration Commission/Beijing International Arbitration Centre (BAC) and the Nairobi Centre for International Arbitration (NCIA) formally founded the China-Africa Joint Arbitration Centre – Beijing (CAJAC Beijing) and China-Africa Joint Arbitration Centre – Nairobi (CAJAC Nairobi).

35 SCIA adopts new arbitration framework

The SCIA's new rules make it the first arbitration institution in China to hear investor-state arbitrations and administer cases under Uncitral Arbitration Rules.

Asia gears up for international arbitration

Developments across the region are supporting the development of alternate dispute resolution mechanisms that will promote further investment into Asia's fast-growing economy, writes Nick Ferguson.

It has been a long time coming, but Asia is slowly building the infrastructure needed to support the development of international arbitration.

Hong Kong and Singapore, in particular, are vying to become the leading regional seat and have both introduced new laws this year governing third-party funding, the development of which has been constrained due to uncertainty around the archaic common-law doctrines of champerty and maintenance.

The growth of arbitration during the past few years has prompted an effort to remove this uncertainty in line with other major arbitration jurisdictions. Hong Kong's Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 is expected to come before lawmakers later this year, while an amendment to Singapore's Civil Law Act was adopted on March 1.

Both laws are only applicable to arbitration – and only to international arbitration in Singapore. And both cities have supported their new legal frameworks with codes of conduct aimed at third-party funders.

To throw light on this new area we spoke to Tom Glasgow, investment manager for Asia at IMF Bentham, a leading funder from Australia that is expanding in the region, about the environment for third-party funding in Asia. We also spoke to Katherine Yap, chief executive of Maxwell Chambers, about what it is doing to promote the development of Singapore as an arbitration seat.

While there has been progress in some areas, there have also been some setbacks. In

the US, the Trans-Pacific Partnership (TPP) agreement would have significantly strengthened the role of international arbitration in investor-state disputes across Asia Pacific and the Americas. However, President Trump has killed off any lingering hopes that the troubled agreement might be successfully concluded.

Dissatisfaction with such agreements is not confined to voters in the US. China's frustration with the time and cost involved in resolving its disputed investments in Africa through traditional international arbitration centres has led it to create its own bilateral arbitration framework in the form of the China-Africa Joint Arbitration Centres. The first centres were established in Johannesburg and Shanghai in November 2015, followed this year by new centres opening in Nairobi, Beijing and Shenzhen in March.

The Beijing Arbitration Commission discusses the background to this initiative in the report.

Elsewhere in the region, the Thai Arbitration Institute issued updated rules in January covering interim measures, consolidation of related arbitrations and service by electronic means, while the Vietnam International Arbitration Centre made provision for expedited procedures and other improvements with a new set of rules adopted in March.

In the Middle East, Saudi Arabia formally opened the Saudi Centre for Commercial Arbitration in Riyadh last October, while Qatar enacted a new law in February aimed at promoting the growth of international arbitration in the country.

Q&A

Katherine Yap, chief executive of Maxwell Chambers

Singapore's Maxwell Chambers is an integrated dispute resolution complex housing best-in-class hearing facilities and support services, as well as top international alternate dispute resolution (ADR) institutions. We spoke to its chief executive about expansion plans and Singapore's role as an ADR hub.

ASIAN-MENA COUNSEL: Can you tell us about Maxwell Chambers' expansion plans and how they are progressing?

Katherine Yap: It is a very exciting period for us as we are expanding our premises to occupy the adjacent conservation building at 28 Maxwell Road. The expansion will add 120,000 square feet of floor space and triple our current size. This will help to support the growth of dispute resolution institutions in Singapore and capture more opportunities in the sector in Asia.

Restoration works are expected to begin in June 2017 and the estimated date of completion is in the first quarter of 2019.

AMC: The new premises are in a historic building, but will presumably feature state-of-the-art technology. What can tenants expect?

KY: The new premises aims to provide world-class offices housing both the top international and local law practitioners as well as business facilities for tenants. These include the exclusive usage of the meeting rooms, secretariat services and a 24-hour business centre. One key point differentiating the new premises from other office spaces

would be the exclusive lounge for tenants, which would provide them with a space to unwind and network.

Upon completion of the new building, the current premises at 32 Maxwell Road will be dedicated to hearing and preparation rooms for commercial dispute resolution cases. An overhead link-bridge will also be constructed for seamless access between our existing building and the new premises.

AMC: What is driving the need for expansion?

KY: Singapore is becoming an increasingly popular destination for international corporate arbitration in Asia. As such, Maxwell Chambers has been registering steady growth in the number of arbitration cases held on its premises over the years.

Furthermore, there has been a significant increase in the number of enquiries on tenancy opportunities at Maxwell Chambers. With this rise in demand for hearing rooms and tenant space, we believe that the expansion of Maxwell Chambers is timely.

AMC: How is Singapore developing its position



Katherine Yap

as a regional ADR hub and how will the Civil Law (Amendment) Bill and the Mediation Bill affect this?

KY: Established in January 2015, the Singapore International Commercial Court (SICC) won much praise for its first written judgement issued last year. Thus, the legal community is generally optimistic about its potential and I believe that the complementary relationship between SICC and the Singapore International Arbitration Centre (SIAC) would help to drive more international corporate work into Singapore.

While Singapore is one of the top five most preferred seats of arbitration worldwide, there is a need to stay responsive and constantly adapt. The Civil Law (Amendment) Bill 2016

provides a framework for third-party funding in Singapore, and third-party funding has been a feature in other leading arbitration centres. The Bill will hence allow Singapore to stay ahead of the trends and level the playing field, thereby allowing international businesses which arbitrate in Singapore to make use of financing and risk management tools.

Similarly, the Mediation Bill provides a new legislative framework for mediation by strengthening the enforceability of a mediated settlement agreement and providing certainty for cross-border mediation users. The provisions of this Bill aim to draw more international commercial mediation work to Singapore and further strengthen Singapore's position as an international dispute resolution hub.

I would say that the Civil Law (Amendment) Bill 2016 and the Mediation Bill indicate the growing sophistication of the ADR market in Singapore. And it is definitely a positive sign that Singapore is not resting on its laurels amid the globalisation of markets.

AMC: What are Singapore's unique selling points as an ADR venue?

KY: First and foremost, Singapore's advantage lies in its geographical location. It is situated in the dynamic and fast-growing Asia-Pacific region and is closely linked to the major economies of China and India.

Well-known internationally for its impartiality and neutrality, Singapore has established itself as a trusted location for high-quality cross-border dispute resolution. According to the World Economic Forum's Global Competitiveness Report 2016-2017, Singapore is ranked the most transparent and least corrupt country out of 138 economies. While Singapore's legal system, which is based on the British common law system, is highly regarded, we are also known to have excellent infrastructure for dispute resolution.

With our stellar reputation as a one-stop establishment that provides world-class facilities and houses top global ADR institutes under one roof, Maxwell Chambers is attracting even more organisations to settle their disputes in Singapore. In fact, Maxwell Chambers is recognised by many in the legal fraternity to have best-of-class hearing rooms and preparation rooms with an extensive support system to complement the requirements of arbitration hearings.

AMC: To what extent does Singapore compete with Hong Kong as an ADR venue?

KY: While Singapore and Hong Kong appear to be the two most popular Asian seats for arbitration in recent years, it would not be fair to make a direct comparison between the two countries. The ultimate choice of hearing centre is dependent on several factors, including the type of disputes, the nationality of the parties and the seat of the hearing.

On our end, Maxwell Chambers is constantly striving to improve its services. I believe that the standard of service quality and the set-up of the arbitration centre differentiates us from the rest of the competition. Our diligence in keeping up with technology and corporate knowledge also provides us with an edge in this industry.

AMC: Do you see Maxwell Chambers embracing virtual courts or online ADR in the coming future?

KY: Maxwell Chambers currently offers video-conferencing and tele-conferencing facilities, which are often requested by international clients. With the rapid advancement of technology, online mediation and arbitration is definitely a sector we are keen to explore in the coming future.

However, as Maxwell Chambers' core business lies in its state-of-the-art hearing facilities, our main focus will still be on offering these facilities for physical hearings. At the same time, we keep abreast of the latest developments in technology and are on a constant lookout for new opportunities and partnerships to ensure that we stay ahead of the pack.

Our recent collaboration with Opus 2 International would be a good example of our commitment to continuously upgrade the services available at Maxwell Chambers. Besides offering preferred transcription services to clients, Opus 2 will also provide the option of its internationally-acclaimed Opus 2 Magnum cloud platform to the legal parties and arbitral panels engaged in hearings at Maxwell Chambers.

AMC: What significant changes have you seen in the seven years since Maxwell Chambers has been active?

KY: We have seen a steady growth in the number of cases held at Maxwell Chambers over the years, and it is largely due to Singapore

“With the rapid advancement of technology, online mediation and arbitration is definitely a sector we are keen to explore in the coming future”

becoming an increasingly popular destination for international corporate arbitration in Asia.

The expansion of our premises is driven by this demand for a world-class dispute resolution complex, and I trust that this expansion will elevate Maxwell Chambers' position as the one-stop Asia Legal hub with a wide range of legal services offered.

We have also made provision of authentication and certification of arbitration awards seated in Maxwell Chambers. This is in line with our strong belief in bringing added value to our clients.

We are really excited about the developments Maxwell Chambers has in the pipeline for the next three years. While it is going to be an uphill battle, we are certain that we will emerge much stronger and firmly establish Maxwell Chambers as the leader in the industry.

Looking back at the past seven years, we are proud of what we have accomplished, and we look forward to many more years to come.

Katherine Yap first joined Maxwell Chambers as the head of communications and customer relations, spearheading its establishment as an arbitration centre in 2009, the first of its kind in Asia. She was promoted to general manager in 2011 before assuming her current position as the Chief Executive in 2016.

Prior to joining Maxwell Chambers, Yap was director of marketing and communications for Laguna National Golf and Country Club and The Pines Club. Besides extensive experience in marketing communications, she is a certified associate mediator from Singapore Mediation Centre and an appointed mediator for Community Mediation Centre.

Third-party funding in Asia

Asian-mena Counsel speaks to *Tom Glasgow*, investment manager for Asia at **IMF Bentham**, about the environment for third-party funding in the region

ASIAN-MENA COUNSEL: What is the current scope of third-party funding in Asia?

Tom Glasgow: Demand for commercial financing of litigation, arbitration and insolvency cases is growing steadily across jurisdictions in Asia.

In the leading centres for international dispute resolution, Singapore and Hong Kong, legislative changes are paving the way for third-party funding of international arbitration and associated court proceedings. These changes complement a steady upward trend in the courts' willingness to approve funding arrangements in those jurisdictions, including in respect of insolvency claims and in cases where it facilitates access to justice.

In some jurisdictions, the restrictive doctrines of maintenance and champerty are still prevalent; or alternatively, there is a grey area where third-party funding is neither expressly permitted nor expressly prohibited. As demand for litigation finance increases, we expect to see appropriate reforms to expand the circumstances in which funding is permitted through a healthy dialogue between regulators, funders and users of the system.

The position is fast evolving and we encourage in-house lawyers to assess their financing options when considering any potential commercial claim within the region.

AMC: Can you briefly explain the concepts of champerty and maintenance?

TG: These common law doctrines were introduced in 12th-century England to prevent wealthy barons abusing the justice system to achieve personal aims. Maintenance is the

support of litigation by an individual without a legitimate interest in the case. Champerty is an aggravated form of maintenance in which the uninterested party seeks to profit from the outcome of the case.

AMC: When is third-party funding appropriate?

TG: There are many situations where third-party funding might be suitable. The most obvious is where a claimant does not have the funds to pursue a case. We also receive inquiries from in-house lawyers seeking to use third-party funding as a tool to manage the risks and costs of commercial claims. Funders like IMF effectively allow claimants to transfer all costs (including the risk of adverse costs awards) to a third party, while retaining the bulk of any recovery.

In a world of tightening legal budgets and increasing legal costs, this is often an attractive proposition that permits the allocation of legal spend towards other important front-end work. There may also be a significant benefit from an accounting perspective: if costs can be outsourced to the funder's balance sheet, companies no longer face the monthly drag on P&L.

Clients seeking funding for a case typically approach us at the outset of the dispute, sometimes even before legal advisers are appointed. We are also approached later in the life-cycle of a matter, at the appeal stage or when complex enforcement is required, as parties begin to suffer from the "fee-fatigue" of a drawn-out case.

Claim value is also important. There must

be a sound claim in damages of sufficient value to provide a return to the claimant and to the third-party funder. At IMF, our objective is that the majority of any amount recovered is retained by the claimant, and for this reason, we prefer to fund cases where there is a minimum ratio of 10:1 between the claim size and the estimated costs of pursuing the case. Claims for declaratory or injunctive relief only are unlikely to obtain funding.

As explained earlier, there are also regulatory considerations. Some countries are yet to embrace third-party funding and care must be taken, especially if a case is likely to involve multiple jurisdictions.

One evolving area of our business is financing for a portfolio of commercial disputes, an innovative solution which allows a company to reduce its disputes costs or eliminate them entirely from its balance sheet. In jurisdictions that allow law firms to operate on a contingency-fee basis, such as the US, a funder might also finance a law firm's portfolio of cases.

AMC: How does IMF Bentham decide which cases to take on?

TG: IMF has been operating for over 16 years and is one of the global pioneers of the third-party funding industry, which began in Australia in the late 1990s. We have a team of over 25 investment managers (all ex disputes lawyers), spread across 11 offices around the globe, who carry out extensive due diligence on any matter that passes our initial investment criteria. Broadly, we are looking for meritorious claims of US\$7 million or above (less for insolvency) enforceable against a solvent defendant.

We run our due diligence process in close partnership with the client and lawyers. We start by assessing the defendant, its asset position and any likely difficulties on enforcement of a judgment or award. We then assess important risk factors such as the claim value, the budgeted legal costs, the case theory and likely defences, the nature of the claimant, its witnesses and its legal representatives, issues of expert evidence and the relevant regulatory environment for funding.

This extensive due diligence exercise is not only for IMF's benefit. By front-loading the development of a case and identifying potential risks we often find we are able to

help shape a stronger case theory which can be run more efficiently; alternatively, if significant issues are identified, the wasted costs of pursuing a weak claim are often avoided.

AMC: What is the best way to approach a funder and package a claim?

TG: The more prepared your application for funding is, the quicker it can be processed. IMF will need to understand, as a minimum, the nature of the defendant and any enforcement risks, any advice from legal counsel, the core underlying evidence and the basis for calculation of the claim value, as well as the likely cost of pursuing the case. The best way to start is usually to prepare a short memo which gives the funder an overview on these key points.

Our assessment is necessarily an objective one and it is important to bear this in mind. We like to take an open and forthright approach. Every case has risks, so the aim is to identify the key risks and work collaboratively to address them. An example is helping to devise an effective enforcement strategy, to minimise the risk that a judgment or award goes unrecovered.

It is not necessary to have the complete package before you contact IMF. Our investment managers will work with you to ensure we have everything we need – and we can provide preliminary funding to help meet the costs of early stage investigations, such as counsel's opinion or an asset report on the defendant. Nor is it necessary to instruct external lawyers before you seek funding. We have an extensive network of trusted lawyers and experts and can



Tom Glasgow

“Our experience suggests that knowledge of the existence of a funder often serves to ‘level the playing field’, prompting a fairer process and increasing chances of settlement”

recommend the best individuals for a given case.

AMC: How much of their recovery will claimants typically have to share with a third-party funder and how is this decided?

TG: Our investment portfolio gives you a statistical answer to this question. We have concluded over 150 cases since listing in 2001, generating nearly A\$1.3 billion in recoveries for clients from A\$2 billion in revenue.

Each case is unique and the actual terms are a matter for negotiation between IMF and the claimant which will be recorded in the funding agreement. Typically, IMF would seek a return on its investment that is consistent with the level of risk in a case, calculated as the higher of either a multiple of our project costs (ie, the amount spent on legal and other fees) or a percentage of the total amount recovered by the claimant. Often our return will operate on a sliding scale such that an early settlement results in a lower fee.

AMC: What are your views on requirements to disclose funding arrangements during a dispute?

TG: IMF has always favoured a transparent approach. For example, in Australian funded litigation we typically lodge a deed poll with the court, confirming our position as funder and that IMF will pay any adverse costs orders incurred during the term of the funding agreement. This avoids any likely application for security for costs and allows the parties to get on with what matters – the substance of the dispute.

In arbitration cases, widely accepted international guidelines require that arbitrators disclose relationships which might denote a potential conflict of interest, including a relationship with a third party who has an

interest in the outcome of a case. Disclosure helps to avoid the risk that a conflict of interest undermines the arbitral award. If the funder also undertakes to meet adverse costs, this should weigh against any application for security for costs.

Finally, our experience suggests that knowledge of the existence of a funder often serves to “level the playing field”, prompting a fairer process and increasing chances of settlement. That said, disclosure should only extend to the identity of the funder and confirmation of whether it is paying adverse costs. The remaining terms of a funding agreement are confidential and irrelevant to the substance of the dispute.

AMC: Finally, what is your outlook for third-party funding in Asia?

TG: We expect Asia to remain a high growth region for the industry as the market for litigation finance becomes more sophisticated and more jurisdictions reform their laws to cater for the changing demands of modern legal services. IMF has committed to the region, opening its first Asia office in Singapore this year, which will service our increasing local case-load and expansion. We are excited about the future of our business in Asia and looking forward to working with all our business and law firm partners across the region.

Tom Glasgow leads IMF Bentham’s Asia office, responsible for assessing and managing funded cases throughout Asia, including arbitration, litigation, insolvency and portfolio finance. Prior to joining IMF Bentham, Glasgow was a senior member of a leading international arbitration and disputes practice in Asia.

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The role of arbitration in promoting Sino-African trade and investment

In March, the Beijing Arbitration Commission/Beijing International Arbitration Centre (BAC) and the Nairobi Centre for International Arbitration (NCIA) formally founded the China-Africa Joint Arbitration Centre – Beijing (CAJAC Beijing) and China-Africa Joint Arbitration Centre – Nairobi (CAJAC Nairobi).

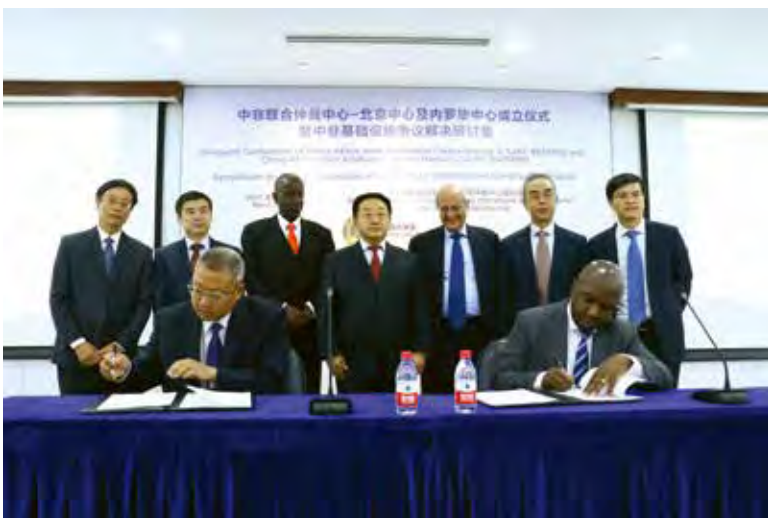
The establishment of the CAJAC Beijing and the CAJAC Nairobi are important measures in building the Sino-African joint dispute resolution mechanism. Based on the platform of the CAJAC, the BAC and the NCIA will work together with each other and provide Chinese and African commercial entities with more qualified and efficient dispute resolution services, and thereby assist with the trade communication and economic development between China and African countries.

It is a cornerstone of China's foreign policy to develop cooperation with African countries,

and the establishment of the CAJAC is an inevitable requirement for upgrading Sino-African economic and trade cooperation, and a significant pillar for the promotion of Sino-African legal cooperation. It is hoped that CAJAC will lay a solid foundation and establish its own presence within the international arbitration community.

Under the background of the Belt and Road Initiative and the Africa Agenda 2063, the economic, trade and investment cooperation between China and Africa will deepen further, and it is therefore important to create a forum for the effective resolution of potential disputes and thereby to promote such cooperation. As a leading dispute resolution institution in Asia Pacific, the BAC has, with the coordination and guidance of the China Law Society, reached cooperation intention with the NCIA, and the establishment of the CAJAC will further strengthen the foundation of the Sino-African legal cooperation. The BAC will work closely with the NCIA to build the CAJAC-Beijing and the CAJAC-Nairobi into an arbitration institution providing qualified, efficient and professional dispute resolution services to commercial entities engaged in Sino-African trade and investment.

Since China and Kenya established diplomatic relations in 1963, Kenya has enjoyed increased trade year by year and frequent communication between Chinese and Kenyan people. Mombasa, as the second largest city of



Lin Zhiwei and Lawrence Muiruri Ngugi sign the cooperation agreement

DISPUTE RESOLUTION



Lawrence Muiruri Ngugi



Lin Zhiwei

Kenya and a trade port, is a freight transfer station for overseas cargoes entering Africa, and thus is very important to the Sino-African economic and trade relationship. The NCIA is equipped with refined arbitration rules, as well as support from local authorities and trust from African enterprises, and therefore it looks forward to promoting the development of arbitration based on CAJAC in the future and providing Chinese and African clients with a reliable dispute resolution platform.

The inauguration ceremony in Beijing saw Lin Zhiwei, secretary general of the BAC, and Lawrence Muiruri Ngugi, chief executive of the NCIA, sign a cooperation agreement on the establishment of a Sino-African joint dispute resolution mechanism between Beijing Arbitration Commission/Beijing International Arbitration Centre and Nairobi Centre for International Arbitration on behalf of the BAC and the NCIA, respectively.

Zhang Mingqi, vice-chairman of the China Law Society; Gu Zhaomin, director of public relations for the China Law Society; Arthur Igeria, chair of the board of the NCIA; Xin Xiuming, vice-chairman of the China International Contractors Association; Huang Wen, deputy secretary general of the Shanghai International Arbitration Centre; and Michael Kuper, president of the Arbitration Foundation of Southern Africa, all witnessed the signing and inaugurating ceremony.

Ever since the presentation of the CAJAC idea in 2012, CAJAC-Johannesburg was founded in 2015 in coordination with the Arbitration Foundation of Southern Africa, with a goal of looking forward to uniting Chinese and African arbitration institutions and creating international dispute resolution rules

“It is a cornerstone of China’s foreign policy to develop cooperation with African countries, and the establishment of the CAJAC is an inevitable requirement for upgrading Sino-African economic and trade cooperation”

to the benefit of developing countries. Sino-African legal cooperation is aimed at building a platform for exchange between the Chinese and African legal circles, and to promote Sino-African cooperation and development, so as to contribute to the realisation of the Chinese dream.

As an important arbitration institution within Asia Pacific, the BAC has endeavored to provide clients with qualified dispute resolution services and to promote the development of the Chinese diversified dispute resolution industry. The establishment of the CAJAC-Beijing will create a larger platform for realising the prospect of building the BAC into a world-class diversified dispute resolution centre. The BAC welcomes colleagues from different circles to continue to pay attention to the diversified dispute resolution industry.



SCIA adopts new arbitration framework



The SCIA's new rules make it the first arbitration institution in China to hear investor-state arbitrations and administer cases under UNCITRAL Arbitration Rules.

Advanced Arbitration Rules

The new SCIA rules were unveiled on October 26, 2016 and took effect on December 1, 2016, including the SCIA Arbitration Rules, the Special Rules of Maritime and Logistics Arbitration and the SCIA Guidelines for the Administration of Arbitration under the UNCITRAL Arbitration Rules. By enforcing the new rules, SCIA is the first arbitration institution in Mainland China to hear investor-state arbitrations and administer cases under the UNCITRAL Arbitration Rules.

Highlights of the new rules:

- *Party Autonomy*
 - **Presiding Arbitrator**
The SCIA Arbitration Rules allow the parties to nominate a presiding arbitrator from candidates

recommended by the president of the SCIA.

- **Applicable Laws**
The parties may choose applicable laws.
- **Arbitration Rules**
The parties may agree on the application of other arbitration rules, including the Uncitral Arbitration Rules.
- **Conduct of Hearing Proceedings**
The parties may agree to adopt inquisitorial, adversarial or other approaches in the oral hearings.
- **Language and Place of Arbitration.**
The parties' agreement on the language and place of arbitration prevails.

- **Investment Arbitration**

The SCIA is the first arbitration institution in Mainland China to hear investor-state arbitrations and administer cases under the Uncitral Arbitration Rules.

- **UNCITRAL Arbitration Rules**

The SCIA Guidelines for the Administration of Arbitration under the Uncitral Arbitration Rules is a milestone in terms of introducing Uncitral Arbitration Rules into Mainland China.

- **Hong Kong as the Place of Arbitration**

For cases where the parties choose to apply the Uncitral Arbitration Rules, if they have agreed on the place of arbitration, the parties' agreement shall prevail; if they have not agreed on the place of arbitration, unless otherwise determined by the arbitral tribunal, the place of arbitration shall be Hong Kong.

Multiple Services: Arbitration + Mediation + Negotiation Facilitation

Besides arbitration service, the SCIA also provides mediation and negotiation facilitation services. Where a settlement agreement is reached through mediation or negotiation facilitation, the parties may apply to the arbitral tribunal for rendering an arbitral award or a mediation statement in accordance with the terms of the settlement agreement.

The SCIA established several centres to provide multiple services:

- Free Trade Zone Financial Arbitration Centre

- High Technology and Intellectual Property Arbitration Centre
- Qianhai Maritime and Logistics Arbitration Centre
- Shenzhen Securities and Futures Dispute Resolution Centre
- Guangdong, Hong Kong & Macau Mediation Alliance
- Negotiation Facilitation Centre

Online Arbitration

The SCIA supplies the parties with a safe and user-friendly online arbitration system. With the decision by the arbitral tribunal or the consent of the parties, the arbitration proceedings may be conducted via online oral hearing system.

SCIA Chronology

- 1983: The SCIA was established as the first arbitration institution in the Guangdong-HK-Macau region since the Opening and Reform.
- 1989: The SCIA became the first arbitration institution in Mainland China whose arbitral award was recognised and enforced outside Mainland China pursuant to the New York Convention.
- 2007: The model of "Chamber of Commerce Mediation + Arbitration" and the model of "Exhibition Mediation + Arbitration" were created. The SCIA was designated by the Ministry of Commerce as the only arbitration and mediation institution to resolve international trade disputes for China Import and Export Fair (the Canton Fair).
- 2009: The dispute resolution model of "Hong Kong Mediation + Shenzhen Arbitration" was created. The SCIA started to provide online arbitration and mediation services.
- 2011: The Centre for Arbitration and Mediation of the Chamber of Commerce Guangdong, the Centre for Arbitration and Mediation of the Chamber of Commerce Shenzhen, and the South China In-house Counsel Forum were established.
- 2012: The SCIA became the first statutory body among China's arbitration institutions.
- 2015: The SCIA handled China's largest arbitration cases ever of which the amount in dispute was Rmb13.4 billion. The case was settled within 13 days.

- 2016: The SCIA implemented new rules, including the SCIA Arbitration Rules, the Special Rules of Maritime and Logistics Arbitration and the SCIA Guidelines for the Administration of Arbitration under the UNCITRAL Arbitration Rules.
- 2017: The China-Africa Joint Arbitration Centre (Shenzhen) was established in the SCIA.

Model Dispute Resolution Clauses

- For all disputes:

Model Arbitration Clause 1:
Any dispute arising from or in connection with this contract shall be submitted to SCIA for arbitration.

Model Arbitration Clause 2:
Any dispute arising from or in connection with this contract shall be submitted to SCIA for arbitration.
- For international, foreign-related disputes or disputes related to the Hong Kong Special Administrative Region, the Macau Special Administrative Region and Taiwan Region:

Model Arbitration Clause 3:
Any dispute, controversy or claim arising out of or relating to this contract, including but not limited to the interpretation, performance, breach, termination or invalidity, shall be submitted to the Shenzhen Court of International Arbitration in accordance with the Uncitral Arbitration Rules (2013).

Model Arbitration Clause 4:
Any dispute, controversy or claim arising out of or relating to this contract, including but not limited to the interpretation, performance, breach, termination or invalidity, shall be settled by arbitration in accordance with the Uncitral Arbitration Rules (2013), and the appointing authority shall be the Shenzhen Court of International Arbitration.

About SCIA

The Shenzhen Court of International Arbitration (SCIA, also known as the South China International Economic and Trade Arbitration Commission) was established in 1983 in the Shenzhen Special Economic Zone. It is an arbitration institution founded to resolve contract disputes, investment disputes and other property rights disputes among

individuals, legal entities and other institutions from China and overseas.

Corporate Governance Structure

The SCIA was the first arbitration institution established by legislation authorising its corporate governance structure with an international council, which ensures openness, transparency and independence.

International Panel of Arbitrators and Arbitration Cases

The SCIA has included foreign professionals on its panel of arbitrators since 1984, the first arbitration institution in Mainland China to do so. The current panel comprises 870 arbitrators from 50 countries, resolving disputes for the arbitration parties from more than 60 countries and mediation parties from 112 countries.

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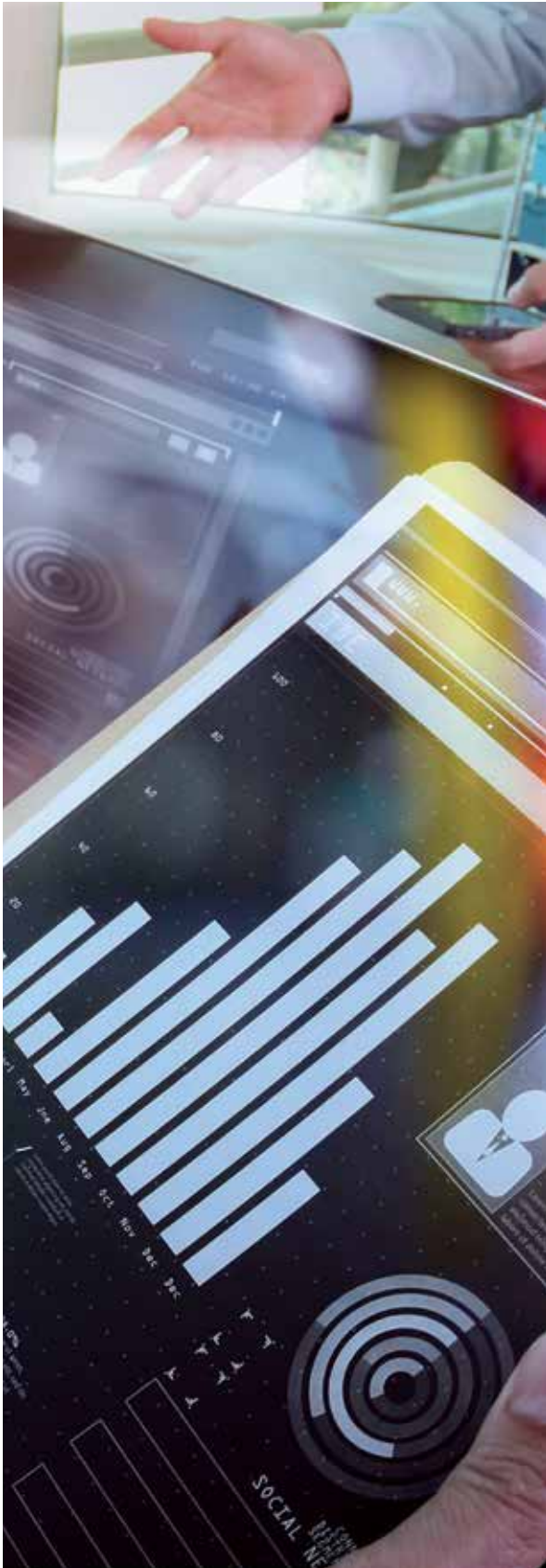
Taylor Root – Asian-mena Counsel

Market update and salary survey report for the legal and compliance in-house sector in Asia

2016 REVIEW & 2017 OUTLOOK

Asian-mena Counsel is delighted to present Taylor Root's 11th annual report for the in-house legal and compliance sector in Asia.

asian-mena
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Market Overview

The evolution of the General Counsel function over the past decade from a support function to a business partner has led to increasingly larger, specialised and prominent in-house legal teams. To be a successful General Counsel or in-house lawyer in a multiple jurisdictional region like Asia requires strong business acumen and a holistic view on managing legal, regulatory and reputational risk. With this evolution and the shift in the balance of power from relying on external law firms to specialised internal legal resources, the competition for talent within the in-house legal community has intensified.

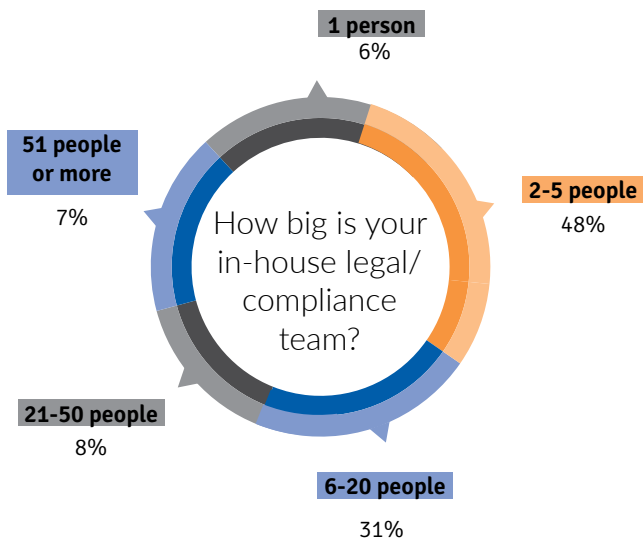
At the junior level, not only is a comprehensive knowledge of the law required but it is a prerequisite that lawyers demonstrate both commercial and business acumen.

At the senior level, lawyers now require a thorough understanding of the business, its products and the business environment in which it operates. Whether junior or senior, in-house counsel need to deliver high-quality and commercially-focused legal advice as a business partner.

This evolution has changed the in-house legal landscape with increasing demands on lawyers to manage legal issues in an ever-increasing regulatory environment while at the same time trying to retain control of costs.

This report reviews the Hong Kong, Singapore and China legal and compliance markets in more detail, and also takes a look at average salaries.

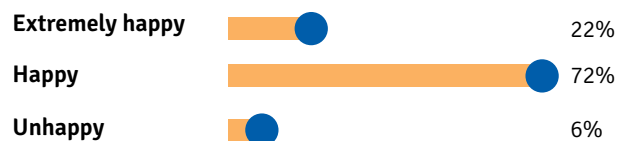
Key Findings



Do you think you are currently being paid enough?



Are you currently happy to be working as an in-house lawyer?



In the coming year, do you expect your in-house team to:

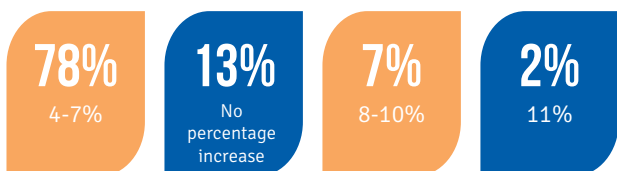


If you were starting your career again, would you choose to move into the legal profession?

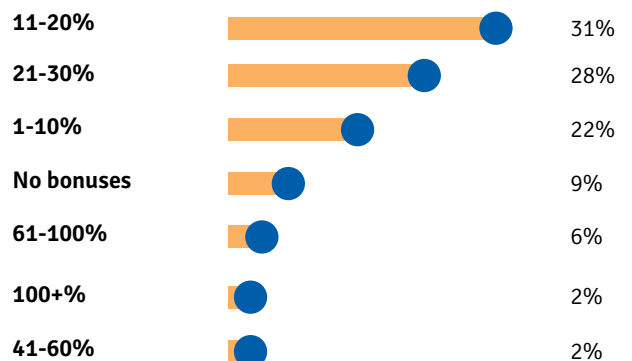


Salaries and Bonuses

Average increase



Average bonus



Hong Kong



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BANKING & FINANCIAL SERVICES

Hiring activity within the investment banking sector remains subdued, reflecting the challenging conditions within the sector globally. Notwithstanding the lower levels of activity within the investment banking sector generally, there has been increased hiring activity within financial markets, with derivatives and structured products lawyers particularly in demand. This has been driven by a shortage of talent and a combination of increased trading activity within these markets, together with ongoing regulatory reform projects as global banks implement the requirements of Dodd-Frank, MiFID II/MiFIR and EMIR reforms, and move to more efficient centrally cleared trading platforms.

Maintaining the trend of recent years, asset manager and funds continue to be a growth sector for in-house legal roles. As more small and mid-cap fund managers increase their exposure, they are increasingly seeing value in adding in-house legal resources. Additionally, as their investments become more diverse and greater in value, these organisations are also under regulatory pressure to ensure that they have sufficient legal and compliance resources in place.

Wealth management also continues to be key growth area within the in-house legal market, with a number of organisations including investment banks, PRC and Hong Kong banks, private wealth management firms and brokerage houses competing to capture a share of the high-net worth market, both in Hong Kong and across North Asia.

As technology platforms have evolved, wealth management firms have been able to provide clients with access to a broader range of products, but have consequently been subjected to increased

regulatory pressure, making it imperative for these firms to ensure their legal and compliance teams are adequately resourced. Given the small size of most teams within the wealth management sector, there are a small number of candidates in the market who have specific experience in wealth regulatory advice, client transaction structuring and general commercial advisory.

The market for general banking lawyers' remains subdued largely due to the stability of teams and the availability of law firm secondees. Transaction banking skill sets such as trade finance, securities services and cash management remain highly sought after however hiring has centred on midlevel rather than senior roles. Key drivers for the consumer finance market are innovation and technology, as banks seek to gain a competitive advantage, win market share and create greater efficiencies of scale in a high volume, low margin market. This comes in addition to increasing pressure on major financial institutions from non-traditional service providers such as electronic payments services, remittance providers, second tier mutual banks/credit unions and mortgage providers.

SALARIES

	Salary Range (HK\$)				
	NQ -2 years' PQE	3-5 years' PQE	6-8 years' PQE	9-11 years' PQE	ED+
Derivatives/ Structured Products	840,000 - 1,380,000	1,080,000 - 1,620,000	1,380,000 - 1,860,000	1,500,000 - 2,220,000	1,980,000 +
Capital Markets (Debt and Equity)	720,000 - 1,320,000	900,000 - 1,500,000	1,200,000 - 1,800,000	1,440,000 - 2,220,000	1,980,000 +
General Banking	600,000 - 1,020,000	840,000 - 1,500,000	1,200,000 - 1,800,000	1,440,000 - 2,220,000	1,800,000 +
Regulatory/ Investigations	720,000 - 1,320,000	1,020,000 - 1,500,000	1,320,000 - 1,800,000	1,440,000 - 2,220,000	1,980,000 +
Private Banking/ Wealth & Asset Management	840,000 - 1,380,000	1,080,000 - 1,620,000	1,380,000 - 1,860,000	1,500,000 - 2,220,000	1,980,000 +
ISDA®/Master Documentation	480,000 - 750,000	700,000 - 1,200,000	840,000 - 1,320,000	960,000 - 1,440,000	1,440,000+
Insurance	600,000 - 1,020,000	840,000 - 1,500,000	1,800,000 - 1,620,000	1,440,000 - 1,800,000	1,560,000 +

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COMMERCE & INDUSTRY

The Hong Kong commerce and industry markets remains buoyant as demand for in-house counsel continues across the sectors. We have continued to see good levels of recruitment activity across most sectors and multiple hires within Chinese headquartered companies as they expand legal headcount due to business needs and global expansion. As a result to changes to team structure within Hong Kong companies and multinational corporations, there has been a significant amount of movement in the market although the vast majority of roles would be classified as replacement roles rather than increased headcount.

As usual, there is a consistent demand for corporate commercial lawyers, and especially those candidates who have trained with well-regarded law firms coupled with two years of in house experience. Industry specific legal experience is especially important at the senior end of the market and within the retail and FMCG sectors. Given FMCG companies are among the least likely to hire from outside industry, this has led to an above average level of external recruitment at a senior level.

The healthcare and pharmaceutical industries have mirrored the FMCG market in terms of recruitment, albeit primarily at the mid-to-senior Legal Counsel level. There is a continuous demand for lawyers with specific healthcare/life sciences

competition and consumer law experience from the healthcare industry in Hong Kong or mainland China, and the industry is typically also one which also hires from within. Candidates with specific TMT/IP background are still sought after particularly in technology companies. Luxury or retail brands were also looking for candidates with either general commercial experience or IP brand enforcement background. Property or real estate lawyers were also in demand.

Overall, the candidate pool of commercial lawyers in Hong Kong is relatively small and the void is generally filled with capital markets/ banking finance candidates who are then trained in the intricacies of the specific company or industry. For companies with budget constraints, candidates who have worked in local Hong Kong law firms generally have broader and more hands-on experience and are generally considered more affordable from a client's perspective.

From a salary point of view; there has been an overall increase in salaries at the mid-level, particularly 4-7 years' PQE. While this no doubt reflects the increasing demand at this level, many organisations have demonstrated a willingness to pay more to attract high calibre lawyers to their in-house legal teams, providing a strong talent pipeline. Conversely, at the senior end of the market, there has been little movement in terms of remuneration. While senior candidates can expect an uplift should their role change in scope, whether by the inclusion of greater leadership or regional responsibilities, there has been little evidence of anything other than incremental increases at the senior end of the market.

The pool of commercial lawyers in Hong Kong is relatively small and the void is generally filled with capital markets/banking finance candidates.



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● SALARIES

	Annual Salary (HK\$)				
	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
Real Estate/ Construction	600,000-960,000	960,000-1,200,000	1,200,000-1,440,000	1,440,000-2,000,000	1,800,000 +
FMCG	600,000-1,000,000	960,000-1,200,000	1,100,000-1,500,000	1,440,000-1,800,000	1,700,000+
Transport/ Logistics/Aviation	600,000-960,000	960,000-1,100,000	1,100,000-1,400,000	1,200,000-1,680,000	1,600,000+
Pharmaceutical/ Chemical	600,000-960,000	960,000 - 1,100,000	1,200,000-1,500,000	1,500,000-1,800,000	1,800,000+
IT/Media	600,000-960,000	1,000,000-1,200,000	1,200,000-1,440,000	1,440,000-1,800,000	1,800,000+
Energy	600,000-960,000	1,000,000-1,200,000	1,200,000-1,500,000	1,500,000-2,000,000	1,800,000+
Shipping	600,000-900,000	900,000-1,000,000	1,000,000-1,300,000	1,200,000-1,600,000	1,600,000+

COMPLIANCE

The responses to our survey make more positive reading than we anticipated four months ago. Compliance department heads report they are still under staffed and are committed to recruit more compliance professionals for rest of 2017 in Hong Kong. The current demand trend is away from top tier investment banks to the wider financial services industry including the emergence of new providers such as Fintech companies and mid-size financial services groups. While compliance professionals with highly specific skills remain scarce and are in huge demand, there is a strong desire to promote internally and backfill the junior vacancies.

Fintech companies currently offer various types of financial products including loans, mortgages, and payments across digital banking, foreign exchange. There will be an increasing number of compliance roles in the next 12 to 24 months as regulators such as SFC continue to focus on them. A further source of demand is from the insurance sector as they come under greater regulatory scrutiny. They will continue to drive demand following the once dominant banking sector. The insurance authority will need to hire experts in the region to assist with this matter and hence there will definitely be tighter rules set in place as the regulations will enhance protection to the policyholders from the mainland and Hong Kong.

Banks will try to avoid costly compliance failings by hiring more staff and continue expansions of their KYC/AML teams. Growing belief amongst industry insiders is that compliance needs to be understood as an attitude and a culture, not just as a departmental function. AML and Products Compliance specialists will continue to be in high demand in Q2 through Q4 2017.

In 2016, the SFC has proposed to enhance asset management regulation and point-of-sale transparency to enhance the regulation of the asset management industry in Hong Kong to better protect investors' interests and ensure market integrity. In response, hedge fund managers/ private equity firm have been expanding their compliance capabilities. The demand on regulatory compliance professionals in hedge fund/ PE has been increasing especially with Chinese-based companies. We see more new headcounts in AML compliance within the traditional asset management fund houses this year. Given the lack of AML professionals in the asset management industry, it is a highly competitive niche area to secure employment in.

The investment banking recruitment markets have slowed due to the decrease in recruitment from the larger banks. As banks' costs are being cut, this sector has become very vacancy focused and most of the vacancies are relied on direct sourcing. However, within the markets compliance space, it has still been a very candidate led market. We also see an increase in demand on hiring compliance specialists in Chinese Banks.



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SALARIES

	Salary Range (HK\$)				
	2-4 years	5-7 years	8-10 years	11-15 years	15+ years
Investment Banking	200,000 – 480,000	500,000 – 840,000	850,000 – 1,200,000	1,500,000 – 1,800,000	2,000,000 – 3,500,000
Funds & Asset Management	180,000 – 360,000	400,000 – 600,000	700,000 – 1,100,000	1,200,000 – 1,600,000	1,800,000 – 2,800,000
Consumer/Retail Banking	144,000 – 300,000	360,000 – 550,000	600,000 – 960,000	1,000,000 – 1,500,000	1,600,000 – 2,400,000
Private Banking / Wealth Management	240,000 – 400,000	450,000 – 650,000	720,000 – 1,200,000	1,400,000 – 1,700,000	1,900,000 – 3,000,000
Insurance	144,000 – 300,000	360,000 – 500,000	550,000 – 800,000	960,000 – 1,300,000	1,500,000 – 2,200,000
Financial Crime (Anti-bribery & Corruption, Sanctions, AML Advisory and etc.)	180,000 – 360,000	400,000 – 650,000	720,000 – 1,200,000	1,300,000 – 1,800,000	1,900,000 – 2,600,000

Singapore



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BANKING & FINANCIAL SERVICES

The banking and financial services industries in Singapore have continued to grow steadily in the past year; though with certain sectors registering markedly higher recruitment activity than others. Notably, this was seen mainly in the financial services industries. Particularly, it has been the payments services and FinTech companies who have bolstered their legal capabilities, alongside their corresponding business growth. Buy-side institutions such as asset managers and private equity/hedge funds have also deviated slightly by focusing on building their teams with junior lawyers, instead of the typical practice of taking on experienced hires at the mid-senior levels.

Global changes for banks have seen most legal teams maintaining their team size, save for replacement hiring that occurred as a result of natural attrition. However, it is worth noting that some banks' efforts to reduce costs have seen them either trying to relocate legal functions to lower cost centres offshore, or to automate, as far as possible, legal services (of a less sophisticated nature) by way of consolidated templates and workstreams. The short term impact of this is likely to reduce demand for lawyers in the banks at the junior levels, whilst its feasibility and impact in the medium to long term remains to be seen.

Skill sets in demand have primarily been in niche areas for custody/securities services, derivatives and regulatory lawyers.

Additionally, there has also been renewed demand for generalist corporate transactional lawyers, albeit with Mandarin language skills, given the increased contact firms are having with Chinese clients. ISDA negotiators, who do not form the purview of qualified lawyers exclusively, continue to be sought primarily within banks, for both contract and permanent positions.

The majority of in-house legal counsels continue to report strong levels of job satisfaction, citing the intellectual challenge and relatively flexible nature of their role as attractive features of their chosen career path. Many have also maintained realistic salary expectations, given the healthy attitude to bonus levels averaging 15-20% in the past year. Salary adjustments, whilst modest (averaging around five per cent), have been unsurprising.

Going by the strong activity levels we have seen from the start of 2017, and barring any significant policy changes within the broader economy, the outlook for the rest of the year remains positive.

● SALARIES

	Salary Range (SG\$)				
	NQ-2 years' PQE	3-5 years' PQE	6-8 years' PQE	9-11 years' PQE	ED/Head of Legal
Derivatives/ Structured Products	90,000 - 120,000	120,000 - 200,000	190,000 - 250,000	250,000 - 330,000	350,000 +
Capital Markets (Debt and Equity)	90,000 - 120,000	120,000 - 190,000	170,000 - 250,000	220,000 - 300,000	320,000 +
General Banking	80,000 - 120,000	100,000 - 180,000	130,000 - 230,000	190,000 - 300,000	310,000 +
Regulatory/ Investigations	90,000 - 120,000	110,000 - 170,000	150,000 - 240,000	220,000 - 310,000	320,000 +
Private Banking / Wealth & Asset Management	80,000 - 120,000	120,000 - 170,000	150,000 - 210,000	200,000 - 280,000	310,000 +
ISDA®/Master Documentation	50,000 - 80,000	80,000 - 140,000	120,000 - 190,000	180,000 - 260,000	270,000 +
Insurance	75,000 - 120,000	120,000 - 160,000	160,000 - 210,000	190,000 - 250,000	250,000 +

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COMMERCE & INDUSTRY

Recruitment throughout 2016 remained steady despite a cautious economic outlook. Softening growth across the US and PRC economies have resulted in a modest pace of growth across most industries in Singapore and the region. However, we continue to see strong growth in the technology and life sciences industries, and expect this recruitment trend to continue through to 2017.

Within the pharmaceutical, medical devices and life sciences sectors; Singapore remains a key regional hub as global multinationals base APAC head offices here. Besides newly created roles at the mid to senior level to establish the legal function in APAC, we also see expansion or replacement position roles for junior lawyers. As the industry tends to be highly regulated, prior industry experience is highly favoured.

Demand for technology lawyers remains strong, both from the technology industry itself and from the broader corporate sector. As all businesses focus on digitalisation, data analytics and innovation, the recruitment of dedicated technology lawyers for in-house teams has become essential for most large corporates, in addition to supporting internal IT contracting, procurement and outsourcing needs.

Smaller, dynamic MNCs in the areas of software, cloud computing, data analytics and the digital sector are starting to recruit for their first regional counsel on the ground in Singapore. Compensation tends to vary widely depending on

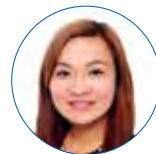
the size and stage of the company's growth. Base salaries on offer tend to be much lower in comparison to what larger, more established companies can offer, but this is compensated with generous equity options.

Recruitment for sectors such as oil and gas, commodities, maritime and resources has remained quite flat, with hiring mostly for replacement roles.

Across other sectors such as oil and gas, commodities, maritime and resources, recruitment has remained quite flat, with hiring mostly for replacement roles.

The manufacturing / semiconductor industries remain volatile and cyclical, with low profit margins and low turnover. We also saw consolidation in the hospitality sector, with a rise of mergers & acquisitions as companies sought to increase market share.

Whilst restructuring and integration created opportunities, local and highly-qualified candidates were sometimes overlooked as some companies chose to relocate internal candidates with a deep pool of industry knowledge, despite the lack of APAC experience.



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SALARIES

	Salary Range (SG\$)				
	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
Real Estate/Hospitality/Construction	70,000 - 120,000	100,000 - 160,000	150,000 - 200,000	180,000 - 260,000	220,000 - 350,000
FMCG/Manufacturing	70,000 - 120,000	100,000 - 150,000	140,000 - 180,000	160,000 - 240,000	220,000 - 350,000
Transport/Logistics/Aviation	80,000 - 130,000	120,000 - 160,000	150,000 - 200,000	180,000 - 260,000	240,000 - 350,000
Pharmaceutical/Medical Technology/Chemicals	80,000 - 140,000	120,000 - 170,000	160,000 - 240,000	200,000 - 320,000	280,000 - 450,000
IT/Media	80,000 - 140,000	100,000 - 160,000	150,000 - 220,000	200,000 - 300,000	220,000 - 400,000
Energy/Natural Resources	80,000 - 140,000	120,000 - 170,000	160,000 - 240,000	200,000 - 320,000	280,000 - 450,000
Shipping	80,000 - 100,000	100,000 - 150,000	140,000 - 180,000	160,000 - 240,000	220,000 - 350,000

COMPLIANCE

The compliance market in Singapore has undoubtedly seen an overall slow-down in recruitment in 2017 as compared to last year. We will continue to see a need for hiring in certain sectors of the Financial Institutions, especially within the Asset Management, Private Bank/Wealth Management and Fintech. Hiring, bonuses and increments in these sectors have been healthy with average bonuses ranging between 3-4 months and increments when switching jobs range between 15-20%.

On the contrary, compliance professionals in Consumer banking and Corporate Investment Banks would have seen better days. Bonuses in these sectors range between 0-2 months and a handful of smaller outfits are on hiring freeze due to budget cuts. Salary increments between jobs are on average between 10-15%.

Financial Crime Compliance will remain as a huge focus in 2017 recruitment, particularly in Anti-Money Laundering with MAS tightening their regulations. There has been a shortage of strong talents in this area, especially between 6-10 years of experience, with well-qualified candidates commanding a bigger salary raise. There is also an increasing emphasis on experts with risk management and investigations experience within FCC, often in the form of newly created positions.

Regulatory compliance has been in demand within the asset management space. Coupled with business compliance

experience, mid to senior level candidates can expect to hear from the top-tier fund/asset management firms this year on exciting opportunities. Senior professionals (10 years +) in this area can expect to be paid 10-15% more than peers in other sectors of the finance industry. While the corporate investment banks, private banks and retail banks have always had a steady need for professionals in regulatory compliance, it seems that there has been less focus on replacement hires and a shift towards distributing responsibilities to existing team members.

Most candidates are motivated to join an organisation with a track record of promotion from within and the opportunity to gain exposure in other specialisations. With more organisations going through restructuring, many seek clarity on team and reporting structure when they are looking for a switch. Although most candidates are financially motivated, having the right environment and strong development plans can help them moderate their expectations on monetary incentives.

Financial Crime Compliance will remain a huge focus in recruitment in 2017, particularly with Anti-Money Laundering with MAS tightening their regulations.



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● SALARIES

	Salary Range (SG\$)				
	2-4 years	5-7 years	8-10 years	11-15 years	15+ years
Investment Banking - Securities & Corporate Finance	50,000 - 90,000	80,000 - 130,000	120,000 - 200,000	180,000 - 300,000	250,000 +
Funds & Asset Management	60,000 - 100,000	90,000 - 150,000	100,000 - 250,000	200,000 - 350,000	250,000 +
Consumer/Retail Banking	50,000 - 90,000	80,000 - 110,000	100,000 - 200,000	160,000 - 250,000	250,000 +
Private Banking/ Wealth Management	55,000 - 100,000	80,000 - 150,000	120,000 - 250,000	200,000 - 350,000	250,000 +
Insurance	40,000 - 80,000	60,000 - 110,000	100,000 - 180,000	150,000 - 250,000	250,000 +
Commerce & Industry/MNCs (FCPA/Anti-Bribery/Ethics & Governance)	50,000 - 120,000	80,000 - 160,000	120,000 - 250,000	200,000 - 300,000	250,000 +

China



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COMMERCE & INDUSTRY

The China in-house legal market remained relatively buoyant in 2016 and we expect it to continue active in 2017. We have seen a steady flow of in-house legal positions at the mid to senior levels, and head of legal roles in middle-sized enterprises. The most coveted candidates are corporate lawyers with existing in-house experience and previous law firm practice, and personality fit remained a high priority with a focus on communication skills and business sense.

As the growth of manufacturing and construction industries continues to slow in China, the majority of openings in this sector are replacement hires. And we noticed that the remit for the replacement roles has often been wider than the original roles with the expectation for the new lawyers to cover more areas and save cost. We saw new roles in more touted industries, e.g. healthcare and life sciences, as well as consumer and service industries. Alongside this, there was a prominent trend across the retail, hospitality and entertainment sector in starting up and strengthening their e-commerce platforms.

Due to the increasing awareness of the value of intellectual property and the dramatic development of on-line business in China, brands are more aggressive in protecting their intellectual property so that IP talent is highly sought-after. The demands of M&A lawyers tend to be increasing from domestic enterprises as they are looking for strategic ways to expand both domestically and internationally. More candidates with an international background are open to domestic companies, however, still facing the challenges of fitting in the company culture.

When seeking a move, junior candidates are keen to consider the compensation, good brand and legal team size as the key factors, while senior candidates pay more attention to stability, people management and company culture. The salary increase expectation of an existing in-house counsel is usually 20-30% but we ultimately found 15-25% more realistic. Lawyers from law firms looking for the first in-house position usually have more flexibility on the salary with opportunities for career progression, expectation for work and life balance, and potential upside in annual discretionary bonus.

SALARIES

	Salary Range (RMB)				
	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
Real Estate/Construction	200,000 - 450,000	350,000 - 700,000	500,000 - 1,200,000	700,000 - 1,600,000	1,400,000+
FMCG	150,000 - 400,000	350,000 - 700,000	500,000 - 1,400,000	750,000 - 1,800,000	1,500,000+
Transport/Logistics/Aviation	100,000 - 350,000	300,000 - 650,000	550,000 - 1,200,000	700,000 - 1,600,000	1,300,000+
Pharmaceutical/Chemical	200,000 - 450,000	350,000 - 700,000	550,000 - 1,500,000	800,000 - 1,800,000	1,500,000+
IT/Media	150,000 - 450,000	350,000 - 700,000	600,000 - 1,300,000	750,000 - 1,700,000	1,500,000+
Energy	150,000 - 350,000	300,000 - 700,000	550,000 - 1,200,000	700,000 - 1,600,000	1,300,000+
Shipping	150,000 - 350,000	300,000 - 650,000	500,000 - 1,200,000	700,000 - 1,500,000	1,200,000+
Manufacturing	100,000 - 350,000	300,000 - 700,000	500,000 - 1,300,000	650,000 - 1,500,000	1,200,000+

工商业

中国大陆的工商业企业法务市场2016年较前一年相对活跃，预计2017年仍会维持该状态。其中，中等规模企业的中高层职位以较为稳定的频率产生新的空缺。同时具有律师事务所执业经验及企业内部法务经验的律师仍然是最受市场欢迎的群体，拥有良好的沟通能力和商业意识也可以从众多律师中脱颖而出。

随着传统的生产制造业，建筑业在中国大陆的增幅放缓，这些行业的企业不会轻易创造新的职位，多为替换性职位。并且在替换性的职位产生时，企业往往要求候选人比前任负责更大范围的工作职责，用来削减成本。而在医疗器械，生命科学，快速消费品及专业服务性行业中的企业，由于业务的发展，多会创造出新的工作岗位。娱乐和电子商务行业的企业在创造新的企业法务职位上表现尤为突出。

由于知识产权保护意识的提高，以及中国大陆线上业务的快速发展，各品牌开始积极的重视自身的品牌保护；因此知识产权相关专业人才备受关注。投资并购专业律师也因为本土企业的大幅对外扩张业务而显得尤为稀缺。尽管会面临适应

全新企业文化的挑战，越来越多拥有国际教育背景工作的候选人仍选择投身于本土企业。

初级律师看机会的时候会更在意公司的品牌，法律团队的大小，以及福利待遇；而中高级律师在找寻新的工作机会的时候会更看重公司的管理层风格及企业文化。在公司企业法务岗位之前换工作的平均薪资涨幅约为20%-30%，但是从实际情况来看15%-25%是更容易达成的范围。律师事务所的职业律师在找寻企业法务岗位的时候对薪资的需求较为灵活，因为他们会更看中工作和生活的平衡型，已经长期的发展。

Online, Cloud *and* e-Resources ...

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“The In-house Community website provides the window on the development of commercial law, practice and compliance in the growth markets of Asia and the Middle East”

Dr Justine Walker, *advisor to the British Banking Association*



The thing about ... Ahmad Bin Hezeem

Recently in Dubai, Asian-mena Counsel's Patrick Dransfield photographed **Ahmad Bin Hezeem**, senior partner at *BSA Ahmad Bin Hezeem & Associates (BSA)* and also put to him a series of questions on behalf of the In-House Community.



Mohammed bin Rashid Al Maktoum, the emir of Dubai, admires a statue of his father, the driving force behind the expansion of Dubai in the 1960s. The statue was discovered in one of the storage rooms of the Dubai Court and brought to light by Ahmad bin Hezeem

ASIAN-MENA COUNSEL: BSA was founded in 2001 and you joined the firm in 2014. What attracted you to the BSA platform and how has it evolved under your leadership?

Ahmad Bin Hezeem: BSA was established by a group of ex-Clifford Chance lawyers wanting to harness their entrepreneurial spirit, energy, ambition, unique heritage and connections, and with that in mind, build a law firm with a difference. Ever since, it has excelled at achieving this vision and today we have offices in eight jurisdictions throughout the Middle East and rights of audience in every country in which we are based. BSA became the first UAE-based law firm to be registered by the DFSA to operate out of DIFC as an Ancillary Service Provider in 2006 – a highlight.

My predecessor Dr Rashid Bin Shabib offered

me a rare and very exciting opportunity to join BSA as senior. I took on this position because I found BSA's vision compelling and I wanted to be part of it. Under my leadership, the firm has strengthened its vision of working according to the pillars of providing local knowledge and experience, being ethical and approachable, and working with integrity and commitment.

I brought my extensive government experience and my practical experience of working as an official to the firm. My skills have integrated well with those of the other partners. This integration has become manifest in our unique approach to client satisfaction and service.

AMC: How has the local and regional legal market in the Middle East developed during



the past decade and what are the challenges for local and regional legal providers?

ABH: The UAE has undergone dramatic economic changes in the last 15 years – they have been felt in Dubai and Abu Dhabi particularly. The booming real-estate market and related economic activity dissipated during the economic crisis of the late 2000s. Many international law firms' response strategies were shown to be wanting. They did not fully take into account local culture; and ran into problems – especially in 2014.

For BSA, the economic crash was a time of expansion and business development. We were able to occupy the space left by the international law firms' rearrangements. We seized the opportunity to fill the gap they left. We successfully won and maintained clients as time and time again we proved our in-depth knowledge and intuition when delivering legal advice.

AMC: During your career you have held a variety of in-house role – how have these experiences helped in the development of client services at BSA?

ABH: I brought 25 years' experience and am fortunate to count myself among the top national lawyers in the UAE. I happen to be the only national lawyer to have served in all major

law-enforcement and judicial institutions – in the Dubai Police Department, the Crown Prince of Dubai's office and the Ruler Court of Dubai and working as Chief of Dubai Courts. These experiences provide a deep and unrivalled insight into the workings of UAE law and benefit my clients.

My qualifications have helped me to gain an accurate understanding of clients' needs. Additionally, the experience of studying abroad served to broaden my understanding of other cultures and their legal systems.

AMC: How has the in-house legal community developed? Are there special challenges facing Middle East and North African in-house counsel?

ABH: The in-house community in the UAE has developed into a well-established network of legal professionals. The community's main challenge is that they are required to play a generalist role while fulfilling their legal, ethical and compliance responsibilities. The role of in-house legal counsel encompasses far more than that of a private practice lawyer specialising in a certain area of law. At this stage of the country's development, it would serve companies well to accommodate more local lawyers in their in-house teams to benefit from their understanding of local laws.

AMC: Please describe the firm's regional and international footprint – in what ways does BSA attempt to provide an integrated service for clients and how do you link up with other law firms, both regionally and internationally?

ABH: We have a physical and actual presence throughout the GCC – beside Dubai we have offices in KSA, Oman, Ras Al Khaimah, Iraq and Beirut as well as one international office in Paris, which has extended into partnerships with firms in Morocco, Spain and Istanbul. We are committed to expanding beyond the GCC region and are focused on forming mutually beneficial partnerships with local firms who, like us, are deeply rooted in cultures of their respective countries and are able to provide in-depth local knowledge.

AMC: Richard Susskind has challenged law firms to be on top of technological advances to best provide value service to clients. How does BSA effectively use technologically-

advanced solutions in its services to clients?

ABH: We fully understand Professor Richard Susskind's viewpoint and our vision is aligned with his. Our perspective, however, diverges slightly. While we fully agree that technology is an integral part of providing legal services, it can never provide the same value as human interaction.

Here at BSA we pride ourselves on providing clients with top-level legal advice from our friendly and approachable staff and, this service cannot be replicated by technology. However, internally yes, we are intensively investing and paying great attention to technological advances and ways of using new technological platforms to improve our offering. In fact, we have recently at the renowned Gitex Convention, unveiled a VAT app. Our aim with this app is to solve our clients' VAT related queries and provide clarification on how the implementation of VAT will affect their businesses. We are proud to be the first law firm in the region to offer such a service to clients.

AMC: Recently Susskind has turned his attention to the development of "virtual courts". What is your view on the potential of technology with regards to the process of resolving disputes, in the Middle East and generally?

ABH: I believe that the future of dispute resolution lies in virtual courts. I introduced the e-judge and e-court system five years ago while working in Dubai Courts. Under this system, the judge and other participants in the legal suite would interact and communicate through a sophisticated network of databases and document management systems, improving efficiencies of time, cost and logistics. The system worked extremely well and provided lawyers and judges with a fresh approach to dispute resolution.

AMC: You also serve on the advisory board of the Law Department of UAE University – what advice would you give a young person interested in a career in the legal industry today?

ABH: Young people who choose a career in the legal sector should be aware that to be successful it no longer suffices to be well versed in the laws of their own jurisdiction – professionals also need to have a good handle

on international laws. The legal sector is developing an increasingly international focus. Students must be prepared to broaden their horizons and skills for international requirements. To succeed in this increasingly competitive market I would recommend proficiency in at least two languages since Dubai in particular, but also the UAE, is deploying a very ambitious strategy to become a central hub for international business and tourism.

AMC: What is your hinterland, your interests outside of the firm? How do you control your time so that you can pursue them?

ABH: My passion is sailing. I strive to strike a balance between work and leisure. It is important to have a clear separation of work life and home life. If you are bringing your work home I believe this can adversely affect your familial relationships so I always try to make time for relaxation in the evenings and on weekends. I love to spend my leisure time sailing my boat and allowing the fresh sea air to clear my thoughts, that's how I can come back to the office revitalised, refreshed and ready to approach our challenges from a new perspective.

Ahmad Bin Hezeem has more than 25 years' experience working in legal and judicial governmental institutions in Dubai. His litigation experience includes civil law, criminal law, family and private clients, and breach of contracts.

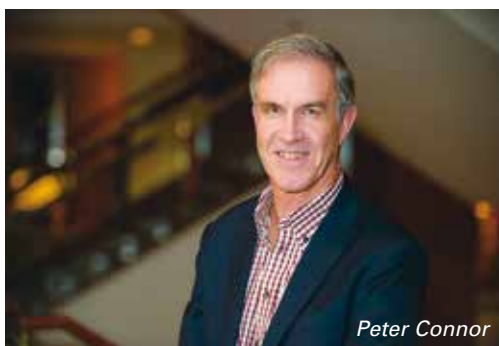
For nine years, he served at Dubai Police in various locations of law enforcement including the stations and headquarters, as well as teaching at the Dubai Police Academy. In 2005, he moved away from teaching and served at the executive office of the Crown Prince of Dubai as the deputy director general of the Ruler Court of Dubai Government.

Hezeem has also worked as the director general of the Dubai Courts, where he engaged in the daily operations of the courts and judicial institutions at the local and the federal level for more than eight years.

He is a former member of strategic governmental bodies such as the Executive Council of Dubai, The Judicial Council of Dubai, The Federal Judicial Council and the Dubai Judicial Institution's Board.

Is your legal team ready for Change 3.0?

Peter Connor, founder and chief executive of AlternativelyLegal, will be a guest speaker at the first Legal Inno'Tech Forum, Asia in Hong Kong on June 8.



Peter Connor

During a career of challenging the status quo and coming up with new and innovative approaches to the practice of law and compliance, as well as working in a wide range of legal and business roles with different players in the legal industry, Peter Connor now looks at legal and compliance differently – through the eyes of the business – and tries to find opportunities to apply technology and process improvement to develop and implement innovative solutions.

We asked him about his journey and how he sees the future of in-house legal and compliance teams.

ASIAN-MENA COUNSEL: What was the genesis and inspiration behind AlternativelyLegal?

Peter Connor: I decided it was time to do

something different after more than 25 years living and working in Hong Kong, Sydney, Silicon Valley, England and Switzerland in APAC and EMEA general counsel roles, head of global compliance, and recently VP of technology products at a compliance firm. I formed AlternativelyLegal to do what I love most – helping in-house lawyers innovate and change the way they work. I do that in two ways. First I provide alternative consulting and training for in-house legal teams under my Everything But The Law programme. Secondly, I help legal and compliance teams to develop and implement cost-effective compliance programmes and I also offer a unique alternative to traditional online compliance training courses. It's called Trouble Traps videos and, unlike traditional courses, corporate employees actually find it engaging and interesting.

AMC: What are the challenges faced by in-house counsel in these dynamic and changing times?

PC: It's pretty overwhelming for lawyers right now. On top of meeting the day-to-day demands of their business colleagues, most lawyers realise that they need to do something to follow and cope with the waves of change in the industry, and to lead change for their legal team and organisation. But even if they can



Peter Connor, founder and chief executive of AlternativelyLegal, will be a guest speaker at the first Legal Inno'Tech Forum, Asia in Hong Kong on June 8.

create the time to do that, there is very little practical guidance available especially from anyone with real-world, global in-house experience at innovation and change. That's also why I developed the Everything But The Law programme – to help fill this void and to provide a vision and framework for legal team change, together with training on the essential skills and knowledge.

AMC: Which are the key areas that legal practice is changing?

PC: Perhaps the first key point to note is that the gap between the way lawyers work in firms and in legal departments is widening and will continue to do so. I'll confine my comments to in-house lawyers as that's the focus of my work now.

Clearly the legal industry ecosystem in which in-house lawyers work is changing dramatically. However, in my experience working with in-house teams all over the world, what I find interesting, but not surprising, is that change at the department and individual lawyer level is variable and lags the industry level change.

Departments tend to be in varying stages of what I refer to as innovation and change maturity. Most departments have implemented Change 1.0, where the primary focus is on cost and initiatives include outside counsel rationalisation, spend management, use of non-legal professionals and sometimes LPOs [legal process outsourcers]. Many departments have progressed to Change 2.0, where the focus is more on efficiency and streamlining work, especially in the contract area through process and workflow improvement, automation tools and e-signature/approvals. Very few departments have evolved to Change 3.0, where the focus will be more on enhancing effectiveness by changing the way individual

“Departments tend to be in varying stages of what I refer to as innovation and change maturity. Very few departments have evolved to Change 3.0, where the focus will be more on enhancing effectiveness by changing the way individual lawyers work”

lawyers work – what they do and how they do it – to provide more value for business colleagues. Change 3.0, together with the expanding roles of in-house lawyers beyond traditional legal advice and the contracting tasks as a result of automation and other trends, is what will increasingly drive significant change in the way individual lawyers work.

AMC: What are the key areas that in-house counsel require training?

PC: As a result of the evolution in the work that you will do, and other factors, you will need new skills in addition to traditional legal skills and general business, leadership and soft skills. I refer to these as ‘non-traditional’ skills and they include process improvement, technology, risk management, design thinking, project management, business partnering and change management. I am currently writing an article – that I will share with In-House Community members – on these skills and why they are needed.

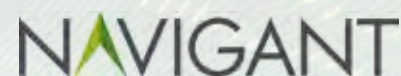
AMC: You have challenged external counsel to be ‘software providers’ – what do you mean by that?

The *Legal Inno' Tech Forum* will be a vital gathering for sharing and learning for GC's and Head of legal, Law Firm Partners, Compliance Managers, Legal IT Professionals and Tech entrepreneurs.

There will be limited seats available at the inaugural *Legal Inno'Tech Forum, Asia* on June 8 in Hong Kong. For more information on the gathering, please contact **Rahul Prakash** at rahul.prakash@inhousecommunity.com

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“In-house lawyers need, at a minimum, to develop a technology plan and an ability to decide whether technology is the best solution and, if so, what technology”

PC: You’ll have to come to the Legal Inno’Tech Forum to hear the full story! In short, firms and others will, for various reasons, increasingly provide software for clients to use. That means that in-house lawyers need, at a minimum, to develop a technology plan and an ability to decide whether technology is the best solution and, if so, what technology. They also need to decide whether to develop it internally, use existing technology or source it externally and, if so, from whom. But perhaps the most novel idea that GCs are keen to discuss with me is how in-house departments can, and should, become software businesses. That is something I will elaborate on further at the forum.

AMC: Are there specific challenges to the delivery of legal services in emerging markets?

PC: Beyond the obvious cultural and language challenges in emerging markets, in-house lawyers are expected to be extremely business oriented and, at the same time, minimise compliance risks which are perceived to be greater than in other markets. It is possible to meet those seemingly conflicting expectations but to do that you need a clear understanding of how to effectively business partner and how to develop cost-effective compliance programmes.

Currently based in Sydney, Australia, Peter Connor has experienced all sides of the legal industry: with one of the largest law firms in the world; in-house with prominent IT multinationals in a chief compliance role and in various regional general counsel roles; and in a VP business role with a small tech-enabled compliance firm. He formed AlternativelyLegal to share his experiences, knowledge, skills – and some specific innovative products – to help individual lawyers, legal departments, law firms and other legal and compliance service/product providers innovate and succeed in the rapidly changing legal industry.

Asian-mena Counsel is grateful for the continued editorial contributions of:



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IP Intellectual Property
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LS Life Sciences
LDR Litigation & Dispute Resolution
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